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Friday
September 11, 1992

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Federal Register

Friday
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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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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.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

Contents

Federal Register

Vol. 57, No. 177

Friday, September 11, 1992

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Agency information collection activities under OMB review, 41721

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Corn, 41722
Genetically engineered organisms for release into environment; permit applications, 41722
Meetings:
National Animal Damage Control Advisory Committee, 41723

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgements:
Salomon Brothers Inc., 41781
National cooperative research notifications:
National Center for Manufacturing Sciences, Inc., 41784
National Forest Products Association, 41784

Army Department
NOTICES
Meetings:
Science Board, 41735
Military traffic management:
Freight rate acquisition programs; petroleum products movement by pipeline carrer; procedures modifications, 41735

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

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
Tenaska Washington II generation project, 41738
Pacific Northwest Electric Power Planning and Conservation Act:
Policy review, 41740

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Community wellness model, 41756

Coast Guard
RULES
Stability design and operational regulations for inspected vessels, 41812

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 41730

Customs Service
NOTICES
Country of origin marking; trade forums; correction, 41810

Defense Department
See Army Department
See Navy Department
NOTICES
Agency information collection activities under OMB review, 41730

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Abbott Laboratories, 41785
Alltech Associates Inc., 41785
Arenol Chemical Corp., 41786

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education improvement fund—
Comprehensive program, 41736
Meetings:
National Assessment Governing Board, 41737

Employment and Training Administration
NOTICES
Adjustment assistance:
Bates Fabrics, Inc., 41789
Noble Drilling (U.S.), Inc., 41790

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 41788

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
Environmental Restoration and Waste Management Advisory Committee, 41737
Secretary of Energy Advisory Board task forces, 41738
Natural gas exportation and importation:
Nicholson & Associates, Inc., 41745

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Arizona, 41699
Water pollution; effluent guidelines for point source categories:
Organic chemicals, plastics, and synthetic fibers category, 41836
Water pollution control:
Pollutants analysis test procedures, guidelines; microwave digestion, 41830
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 41716
NOTICES
Drinking water:
Injection wells (Class II)—
Maximum allowable liquid injection pressure gradients; Michigan, 41751
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 41753
Weekly receipts, 41754
Pesticide programs:
Reregistration eligibility documents availability, 41755

Federal Aviation Administration
NOTICES
Meetings:
Global navigational satellite system; transition and implementation strategy; conference, 41797

Federal Communications Commission
RULES
Radio stations; table of assignments:
Texas, 41700
Vermont et al., 41698
PROPOSED RULES
Commercial radio operator licenses; privatization of examinations, 41718
Radio stations; table of assignments:
California, 41719
Iowa, 41719

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 41807

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Crockett Cogenerations, California Limited Partnership, 41742
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Oklahoma State Corporation Commission, 41740
Texas Railroad Commission, 41740, 41741
Applications, hearings, determinations, etc.:
Canyon Creek Compression Co., 41741
Caprock Pipeline Co., 41741
Columbia Gas Transmission Corp., 41741
Edwards, George W., Jr., 41742
Florida Gas Transmission Co., 41742
Great Lakes Gas Transmission Limited Partnership, 41742
Jupiter Energy Corp., 41743
KN Energy, Inc., 41743
MIGC, Inc., 41743
Moraine Pipeline Co., 41743
Natural Gas Pipeline Co. of America, 41744
Northern Natural Gas Co., 41744
Panhandle Eastern Pipe Line Co., 41744
Steuben Gas Storage Co., 41745
Trunkline Gas Co., 41744
Viking Gas Transmission Co., 41745

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Skagit County, WA, 41798
Snohomish County, WA, 41798

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 41808

Federal Maritime Commission
NOTICES
Agreements filed, etc., 41755

Federal Railroad Administration
NOTICES
Emergency orders; passenger service prohibition:
Association of American Railroads, 41799

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulation Y):
Revisions, 41641
Transactions with affiliates, 41643
NOTICES
Meetings; Sunshine Act, 41808

Federal Trade Commission
PROPOSED RULES
Fallout shelters and radiation monitoring instruments; advertising guides, 41706
Shell homes; advertising guides, 41707
NOTICES
Meetings; Sunshine Act, 41808

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 41776
Environmental statements; availability, etc.:
Lake Wales Ridge National Wildlife Refuge, FL, 41776
Marine mammal permit applications, 41777

Food and Drug Administration
NOTICES
Food for human consumption:
Identity standards deviation; market testing permits—
Coho salmon, skinless, boneless, and canned, 41756
Meetings:
Advisory committees, panels, etc.; correction, 41756

Foreign Assets Control Office
RULES
Libyan sanctions regulations:
Transfers between blocked accounts and reception of fresh funds from outside U.S.; authority revocation, 41696

Forest Service
NOTICES
Appeal exemptions; timber sales:
Boise National Forest, ID, 41723
Environmental statements; availability, etc.:
Santa Fe National Forest, NM, 41724
Meetings:
National Urban and Community Forestry Advisory Council, 41725
National Forest System lands:
Electronic communication sites; rental fee schedule—
Rocky Mountain Region, 41725

Health and Human Services Department
See Centers for Disease Control
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Georgia, 41758
Medicare:
Health maintenance organizations (HMO) qualification determinations and compliance actions;; correction, 41810

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 41746–41749
Special refund procedures; implementation, 41750

Historic Preservation, Advisory Council
NOTICES
Meetings, 41721

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 41761–41763
Grant and cooperative agreement awards:
Public and Indian housing—
Family self-sufficiency program, 41769
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 41764

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

Internal Revenue Service
RULES
Income taxes:
Branch profits tax, 41644
PROPOSED RULES
Income taxes:
Branch profits tax and effectively connected income, 41707

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 41725

International Trade Commission
NOTICES
Import investigations:
Ferrosilicon from Venezuela, 41777
Generalized Systems of Preferences—
Eligible articles list, etc., 41778

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Minnesota Transportation Museum, Inc., 41779
Union Pacific Corp. et al., 41779

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 41786

Land Management Bureau
PROPOSED RULES
Minerals management:
Mining laws; use and occupancy, 41846
NOTICES
Committees; establishment, renewal, termination, etc.:
Casper District Advisory Council, 41771
Environmental statements; availability, etc.:
Low-level radioactive waste facility, CA, 41771
Meetings:
Albuquerque District Grazing Advisory Board, 41771
Casper District Advisory Council, 41771
Motor vehicle use restrictions:
California, 41772
Oil and gas leases:
Montana, 41773
Opening of public lands:
California; correction, 41810
Nevada, 41773
Oregon, 41774, 41775
Realty actions; sales, leases, etc.:
Idaho; correction, 41775
Withdrawal and reservation of lands:
Nevada, 41775

Minority Business Development Agency
NOTICES
Minority business development centers; Hurricane Andrew disaster areas et al.; waiver of cost-share requirements, 41726

National Commission on Financial Institution Reform, Recovery, and Enforcement
NOTICES
Meetings, 41790

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Mazda (North America), Inc., 41803

Transportation Manufacturing Corp., 41804

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Data encryption standard, 41727

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 41759

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements—
Tow time limitations as alternative to turtle excluder devices, 41703
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 41705
Marine mammals:
Commercial fishing operations; tuna (yellowfin) caught with purse seines in eastern tropical Pacific Ocean; incidental taking and importation—
Import requirements; intermediary nation definition, 41701
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Mobil Exploration & Producing U.S. Inc., 41728
Meetings:
New England Fishery Management Council, 41728
Western Pacific Fishery Management Council, 41729
Permits:
Marine mammals, 41729

National Science Foundation
NOTICES
Agency information collection activities under OMB review, 41790
Meetings:
Chemical and Thermal Systems Special Emphasis Panel, 41792

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Warrior, 41698
NOTICES
Environmental statements; availability, etc.:
Marine Corps Air Station, Tustin, CA; relocation to Twentynine Palms and Camp Pedleton, CA, 41735
Meetings:
Chief of Naval Operations Executive Panel, 41736

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
General Electric Co., 41792
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 41793

Occupational Safety and Health Review Commission
RULES
Procedure rules:
Practice before Commission, 41676

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 41793

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Vendor presort software validation program; withdrawn, 41716
NOTICES
Domestic rates, fees, and mail classifications; schedule
Nonprofit mail, non-letter size bulk third-class; preferred rate adjustments, 41793

Public Health Service
See Centers for Disease Control
See Food and Drug Administration
See National Institutes of Health
PROPOSED RULES
Vaccine injury compensation:
Vaccine injury table
Correction, 41809

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 41794
Cincinnati Stock Exchange, Inc., 41794
Midwest Stock Exchange, Inc., 41795
Pacific Stock Exchange, Inc., 41796
Philadelphia Stock Exchange, Inc., 41796

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 41760

State Department
NOTICES
Agency information collection activities under OMB review, 41796, 41797
Senior Executive Service:
Performance Review Board; membership, 41797

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 41690
Utah, 41692
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 41712
Wyoming, 41714, 41715

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 41808

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration

See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 41804–41806

United States Information Agency
NOTICES
Meetings:
Cuba Broadcasting Advisory Board, 41806

Veterans Affairs Department
RULES
Medical benefits:
Outpatient dental services, 41700

Separate Parts In This Issue

Part II
Department of Transportation, Coast Guard, 41812

Part III
Environmental Protection Agency, 41830

Part IV
Environmental Protection Agency, 41836

Part V
Department of Interior, Land Management Bureau, 41846

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.

12 CFR
225.....41641
250.....41643
262.....41641

16 CFR
Proposed Rules:
229.....41706
230.....41707
232.....41706

26 CFR
1.....41644
602.....41644
Proposed Rules:
1.....41707

29 CFR
2200.....41676

30 CFR
935.....41690
944.....41692
Proposed Rules:
920.....41712
950 (2 documents).....41714, 41715

31 CFR
550.....41696

32 CFR
706.....41698

38 CFR
17.....41700

39 CFR
Proposed Rules:
111.....41716

40 CFR
136.....41830
271.....41699
414.....41836
Proposed Rules:
52.....41716

42 CFR
Proposed Rules:
100.....41809

43 CFR
Proposed Rules:
3710.....41846

46 CFR
30.....41812
32.....41812
35.....41812
70.....41812
78.....41812
90.....41812
97.....41812
107.....41812
108.....41812
109.....41812
167.....41812
169.....41812
170.....41812
171.....41812
184.....41812
185.....41812
188.....41812
196.....41812

47 CFR
73 (2 documents).....41698, 41700
Proposed Rules:
13.....41718
73 (2 documents).....41719

50 CFR
216.....41701
217.....41703
227.....41703
661.....41705

Rules and Regulations

Federal Register
Vol. 57, No. 177
Friday, September 11, 1992

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

FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 262

[Regulation Y; Docket No. R-0760]

Bank Holding Companies and Change in Bank Control; Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has revised the provisions of its Rules of Procedure (Rules) and the Board's Regulation Y, Bank Holding Companies and Change in Bank Control. Section 262.3(b) of the Rules requires applicants to publish two newspaper notices of applications filed with the Federal Reserve under section 9 of the Federal Reserve Act (for membership or to establish branches), the Bank Merger Act (if a state member bank is involved), and the Bank Holding Company Act (BHC Act) (to form a bank holding company or for a bank holding company to acquire a bank). These revisions would reduce from twice to once the number of times notice of an application must be published in a newspaper. The amendments would have no effect on public comment periods, which currently start when the first notice is published. Alternative sources of notice will continue to be available, such as the weekly list of pending applications prepared by the Board and the Reserve Banks and, in the case of BHC Act applications, notices published in the **Federal Register**.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), Oliver I. Ireland, Associate General Counsel (202/452-3625), or Deborah M. Awai, Attorney (202/452-3594), Legal Division; Sidney M. Sussan, Assistant Director (202/452-2638), or Gary P. Knoblach, Senior Financial Analyst (202/452-3270), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (5 U.S.C. 552(a)(1)) requires each agency to publish in the **Federal Register** statements that include requirements of all formal and informal procedures available and its rules of procedure. In order to fulfill this requirement, the Board has adopted Rules of Procedure (12 CFR part 262).

Currently, § 262.3(b)(1) of these Rules requires an applicant to publish notice of the following types of applications "on the same day of each of two consecutive weeks" in a newspaper of general circulation:

(i) Application by a state bank for membership in the Federal Reserve System;

(ii) Application by a State member bank to establish a domestic branch;

(iii) Application by a State member bank for the relocation of a domestic branch office;

(iv) Application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank;

(v) Application by a company to become a bank holding company; and

(vi) Application by a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

In July of this year, the Board invited public comment on a proposal to amend § 262.3(b)(1) of its Rules and a related policy statement regarding notice of applications (12 CFR 262.25) to reduce the newspaper publication requirement from twice to once. These revisions would reduce one regulatory burden associated with the filing of applications by reducing the newspaper publication costs and paperwork burden associated with applications that are subject to the publication requirement. The Board also proposed parallel amendments to § 225.14(b) of its Regulation Y (12 CFR part 225) to conform this provision with the revised notice requirements.

The Board sought comment on whether the action would have a serious adverse effect on actual notice of applications and on the opportunity for public comment. The Board also requested comment on the benefits that reducing the publication burden would have compared to the reduction in required newspaper notice. The Board received 17 public comments regarding this proposal. All except two of the commenters support the Board's proposal to reduce the number of newspaper publications. Twelve of the commenters, all bank holding companies, believe that the proposal would reduce the costs and paperwork burden associated with applications that are subject to the newspaper publication requirement.[1] These commenters also believe that the reduction of the newspaper publication requirement would not interfere with the public's ability to submit timely comments with respect to a proposed application since alternative sources of notice such as the **Federal Register** and lists of pending applications prepared by the Board and the Reserve Banks are available.

Two commenters opposed the proposal. Both commenters believe that the proposed reduction in the newspaper publication requirement would decrease the likelihood that the newspaper notice will reach the public making it more difficult for community groups to file comments, and would provide little cost savings to applicants. These commenters noted that because of cost constraints, very few community groups subscribe to the **Federal Register**. The commenters also indicate that the additional newspaper publication requirement would counteract any inaccuracies or omissions that may be contained in the Federal Reserve publications.

Newspaper notice is statutorily required for applications filed pursuant to the Bank Merger Act. For applications filed pursuant to section 9 of the Federal Reserve Act (to establish branch offices or for membership in the Federal Reserve System) or section 3 of the BHC Act (to form a bank holding company or for a bank holding company to acquire a bank), for which no statutory notice is required, newspaper notice has been provided as a matter of policy in order

[1] Three Reserve Banks and one trade association also commented in favor of the proposal.

to permit commenters an opportunity to provide the Board with additional information useful to the Board's evaluation of a pending proposal.[2]

Publication in the **Federal Register** has been the primary means of notice used by the Board to inform the public of pending proposals. The Board believes that a reduction from two to one of the newspaper notice requirement would reduce burden on applicants without significantly reducing the effectiveness of the notice given to the public. In addition to the remaining notice of publication in the newspaper, the public would continue to be made aware of pending applications through various other sources, including public announcement by the applicant (often well in advance of the actual regulatory filing) and weekly publications by both the Board and each Reserve Bank which list, at a minimum, the applications received involving banking organizations in the respective jurisdictions. The Board believes that the retention of at least one newspaper publication requirement is an effective way to notify those members of the general public that may wish to comment on a proposed transaction, and for commenters who may not have access to the **Federal Register** or the weekly publications by both the Board and the Reserve Banks which list pending applications.

The final rule would **not** reduce the amount of time that interested persons would have to provide comments to the Board. That period would continue to be 30 days in general. In addition, the final rule would retain the requirement that newspaper notice must appear no more than ninety calendar days prior to acceptance of an application. This requirement helps to assure that the notice is timely.

Following review of the comments, the Board believes that the elimination of one newspaper publication requirement would not unduly interfere with the ability of the public to submit comments with respect to a proposed application. At the same time, the reduction in a newspaper publication notice would reduce the costs and paperwork burden to applicants associated with filing such applications.

[2] This proposal would reduce the number of times newspaper notice must be published for acquisitions of savings associations to coincide with the publication requirements for acquisitions of banks. Generally, the Board has not required newspaper publication for other proposals to acquire nonbanking interests or engage in nonbanking activities pursuant to section 4 of the BHC Act. As a matter of policy, the Board has required bank holding companies to publish notice in appropriate newspapers of any proposals to acquire savings associations pursuant to 12 CFR 225.25(b)(9).

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the proposed amendments would have a significant adverse economic impact on a substantial number of small entities. The proposed amendments would reduce certain regulatory burdens for affected depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

Paperwork Reduction Act

The Board, acting pursuant to authority delegated to it by the Director of the Office of Management and Budget under 44 U.S.C. 3507(e), has approved the collection of information called for by part 225 of the Board's Rules.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, parts 225 and 262, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831(i), 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)).

Subpart B—Acquisition of Bank Securities or Assets

2. Section 225.14 is amended by adding a new paragraph (b)(3) to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(b) * * *

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

* * * * *

PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 262.3 is amended by redesignating paragraphs (b)(1) introductory text, (b)(1)(i) through (vi), and the flush text beginning "the applicant" and ending with "the Board" as paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A) through (F), and (b)(1)(i) concluding text, respectively; by removing the words "on the same day of each of two consecutive weeks" from the newly designated paragraph (b)(1)(i) concluding text; by designating the text, following newly designated paragraph (b)(1)(i) concluding text, which begins with the words "The notice shall be placed in the classified" as paragraph (b)(1)(ii); and by revising the first, second and third sentences of newly designated paragraph (b)(1)(ii) to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * * (1)(i) * * *

* * * * *

(ii) The notice shall be placed in the classified advertising legal notices section of the newspaper, and must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication. Within 7 days of publication, the applicant shall submit its application to the appropriate Reserve Bank for acceptance along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within ninety days of the date of publication of the notice, the applicant may be required to republish notice of the application. * * *

* * * * *

§ 262.3 [Amended]

3. In § 262.3, paragraph (b)(2) is amended by removing the word "first" in the second sentence.

§ 262.25 [Amended]

4. In § 262.25, paragraph (a)(1) is amended by removing the word "first" in the first sentence.

By order of the Board of Governors of the Federal Reserve System, September 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21880 Filed 9-10-92; 8:45 am]

BILLING CODE 6210-01-F

12 CFR Part 250

[Docket No. R-0762]

Transactions with Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule.

SUMMARY: The Board is adopting a rule to exclude from section 23A of the Federal Reserve Act transactions between affiliated insured depository institutions that are subject to the Bank Merger Act. The exclusion would be available only for transactions that are approved by the appropriate federal banking agency under the Bank Merger Act. The exemption would be available by regulation, and transactions that meet the proposed criteria will not require additional Board review under section 23A. The exclusion is intended to reduce unnecessary regulatory burden by eliminating the need for duplicative federal applications.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher J. Bellini, Attorney (202/452-3269), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) governs the ability of an insured depository institution to lend to or purchase assets of an affiliate. Through its applicability to the purchase of assets, section 23A covers a situation in which an insured depository institution merges with, or purchases all or substantially all of the assets of, an affiliate insured depository institution, unless one of the exemptions in section 23A applies or the Board uses its general authority to grant a case specific exemption. Merger and similar asset acquisition transactions between insured depository institutions are also subject to review and approval by the primary federal banking or thrift authority under the Bank Merger Act (12 U.S.C. 1828(c)) for safety and soundness as well as competitive effects.

Section 23A provides an exemption from the quantitative and collateral restrictions of the statute for transactions between banks affiliated in a bank holding company system (12 U.S.C. 371c(d)(1)).[1] The Board also has not required a section 23A exemption to transfer low-quality assets between affiliated banks in a merger or similar asset acquisition transaction approved under the Bank Merger Act because of the review conducted under that statute of the safety and soundness aspects of the transaction. As a result, in such transactions, duplicative applications under the Bank Merger Act and section 23A have been avoided.

Affiliated thrift institutions became subject to section 23A in 1989 as a result of the enactment of FIRREA (12 U.S.C. 1468(a)(1)). While FIRREA applied section 23A to thrifts in the same manner as it applies to a member bank, FIRREA delayed until 1995 the ability of most thrifts to take advantage of the statutory exemption under section 23A for transactions between affiliated institutions in a holding company system (12 U.S.C. 1468(a)(2)).[2] Accordingly, before engaging in a merger or similar asset acquisition transaction, affiliated thrifts have since 1989 been required to obtain a specific exemption from the Board under section 23A even though the thrifts also must obtain an approval from the acquiring institution's primary federal regulator under the Bank Merger Act.

Section 23A provides the Board with general authority to act by order or regulation to grant specific exemptions from its provisions for transactions that the Board determines are in the public interest and consistent with the purposes of the statute. In considering requests for exemptions, the Board has reviewed carefully the effect of the transaction on the safety and soundness of the institutions involved. The legislative history of FIRREA further indicates that Congress intended this general exemptive authority to extend to transactions involving affiliated thrifts where an exemption is consistent with the purposes of section 23A and with prior Board exemptions. The Board has granted specific exemptions under section 23A for affiliated thrifts involved in merger transactions with the concurrence of the primary federal regulator (the Office of Thrift Supervision) which had conducted a safety and soundness review of the transaction under the Bank Merger Act.

In order to eliminate the need for these duplicative federal applications, the Board proposed to adopt an exemption from section 23A for transactions that are subject to review and approval under the Bank Merger Act.[3] Specifically, the Board proposed to exempt the purchase by one insured depository institution of all or substantially all of the assets of an affiliated insured depository institution, or the merger or consolidation of such institutions, in a transaction in which only one of the institutions continues to operate. The Board did so in light of the fact that in reviewing the Bank Merger Act application for such transactions, the primary federal regulator would conduct the safety and soundness analysis that the Board undertakes in reviewing the section 23A request.

Proposal as Adopted

The Board has determined to adopt the regulation as proposed with a modification to address an issue raised by several commentors and supported by the Office of the Comptroller of the Currency. The Board has determined that the exemption from section 23A should be modified to include all transactions between affiliated insured depository institutions that have been approved by the appropriate federal banking agency under the Bank Merger Act. In this regard, the Board has deleted the restriction in its proposal stipulating that as a result of the transaction only one of the insured depository institutions must continue to operate.

Response to Public Comments

In response to its proposal, the Board received 15 public comments: 10 by holding companies, 2 by law firms, and one each by a depository institution, a corporation, and a trade association. All the commentors favor the exemption because it would reduce regulatory burden and legal and compliance costs by eliminating duplicative regulatory filings. The commentors maintain that the proposal would pose no risk to the safety and soundness of the institutions involved in the transaction, the banking system, or the deposit insurance system because of the existing requirement for prior regulatory review of the transaction under the Bank Merger Act.

[1] To be eligible for the exemption, the bank holding company must control at least 80 percent of the shares of the affiliated banks.

[2] Thrifts in a bank holding company system are eligible for the exemption if every thrift and bank controlled by the holding company meet all applicable fully phased-in capital rules without reliance on goodwill.

[3] 57 FR 28809, June 29, 1992.

Accordingly, the commentors feel the proposal is in the public interest.

Seven of the commentors also contend that the Board's reasoning supports broadening the proposal to include the other categories of merger or asset acquisition transactions that are subject to approval under the Bank Merger Act. These transactions are (1) the sale of a branch or a particular line of business by an insured depository institution to an affiliated insured depository institution,—a transaction in which both institutions continue to operate; and (2) a purchase of assets by an insured depository institution from a nonbank affiliate.

In light of these comments and in order to further reduce unnecessary regulatory burden, the Board has modified the proposal to include all transactions between affiliated insured depository institutions that are subject to review and approval under the Bank Merger Act. The Board notes that in such transactions a prior safety and soundness review under the Bank Merger Act will be performed and that such transactions permit the more flexible movement of assets to promote improved allocative efficiency among affiliated insured depository institutions.

The Board, however, has determined that transactions between an insured depository institution and a nonbank affiliate that are subject to the Bank Merger Act should not be automatically exempted from section 23A. The legislative history of section 23A and prior Board experience indicate that these transactions contain a greater potential for risk of loss to an insured depository institution and thus are appropriately subject to greater regulatory scrutiny. In this regard, certain of the 1982 amendments to section 23A were prompted by the adverse effect on banks that had resulted from transactions with their nonbank affiliates. Moreover, in analyzing prior section 23A requests, the Board has noted the potential adverse effect on an insured depository institution from such transactions and has granted exemptions only sparingly. Finally, an insured depository institution has no protection under FIRREA from losses incurred in transactions with its nonbank affiliates.[4] Accordingly, the Board has determined that these transactions should continue to be reviewed under section 23A on a case-by-case basis.

[4] The cross-guarantee provisions of FIRREA make insured depository institutions affiliated in holding company systems responsible for each others losses. 12 U.S.C. 1815(e).

Other Comments

Two commentors contend that the Board should include in the proposal all merger and asset acquisition transactions that are subject to approval by federal banking agencies under other federal statutes or regulations. The Board notes, however, that the factors or analysis that an agency considers under such statutes or regulations may be different from the factors or analysis considered under the Bank Merger Act or section 23A.

Finally, a commentor contends that the exemption should apply to all purchases of assets between affiliated insured depository institutions provided that the insured depository institutions perform the safety and soundness analysis required under the Bank Merger Act. The Board believes that such an exemption would not be consistent with the purposes of section 23A or in the public interest because of the potential for abuse to an insured depository institution from affiliate transactions that do not receive prior regulatory review and exceed the thresholds established in section 23A. Accordingly, the Board has determined not to modify the exemption to include these other two categories of transactions.

Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the interpretation would have a significant adverse economic impact on a substantial number of small entities. The interpretation would reduce regulatory burdens imposed by section 23A of the Federal Reserve Act and have no particular adverse effect on other entities.

Effective Date

The provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553(d)) that generally prescribe a 30 day prior notice of the effective date of a rule have not been followed in connection with the adoption of this rule because the Board is granting an exemption and reducing regulatory burden. The APA grants a specific exemption from the deferred effective date requirements in these instances (5 U.S.C. 553(d)(1)).

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending Title 12 of the Code of Federal Regulations, part 250, as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 248(i) and 371c(e).

2. Section 250.241 is added to read as follows:

§250.241 Exclusion from section 23A of the Federal Reserve Act for certain transactions subject to review under the Bank Merger Act.

(a) *Grant of Exemption.* Section 23A of the Federal Reserve Act shall not apply to a transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate federal banking agency pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms "appropriate federal banking agency" and "insured depository institution" are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

By order of the Board of Governors of the Federal Reserve System, September 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21879 Filed 9-10-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8432]

RIN 1545-AJ73

Branch Profits Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the branch profits tax, branch-level interest tax and qualified resident rules issued under section 884 of the Internal Revenue Code of 1986 (the "Code"). Section 884 was added to the Code by section 1241 of the Tax Reform Act of 1986. These regulations provide guidance needed to comply with this section and generally affect foreign corporations engaged in trade or business in the United States. These regulations also provide guidance relating to the application of section 884 to foreign governments in light of the changes made by the Technical and

Miscellaneous Revenue Act of 1988 under section 892(a)(3) of the Code.

EFFECTIVE DATES: Except as otherwise provided, both the final and temporary regulations are effective for taxable years beginning on or after October 13, 1992. The fourth sentence of § 1.884–0(a) is effective for taxable years ending on or after September 11, 1992, subject to the conditions provided in § 1.884–0. The amendments to § § 1.884–2T(a)(2)(ii) and 1.884–2T(c)(2)(iii) are effective with respect to taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202–622–3860, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35049(h)) under control number 1545–1070. The estimated average annual burden per respondent recordkeeper varies from .1 hours to 8.0 hours depending on individual circumstances, with an estimated average of .3 hours.

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

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

Background

On September 2, 1988, proposed and temporary regulations § § 1.884–0T, 1.884–1T, 1.884–2T, 1.884–4T and 1.884–5T were adopted (as part of T.D. 8223) and published in the **Federal Register** at 53 FR 34045 (September 2, 1988). Written comments were received and a public hearing was held on February 19, 1989. Subsequently, several notices were issued by the Internal Revenue Service that set forth changes that would be made to the temporary regulations. Notice 88–133 (1988–2 C.B. 559) provided for transitional relief with respect to certain procedural requirements relating to the qualified resident rules; Notice 89–14 (1989–1 C.B. 633) provided for transitional relief with respect to compliance with the branch-level interest tax rules; Notice 89–73 (1989–1 C.B. 739) announced the branch profits tax rate for foreign corporations that are qualified residents of France; and Notice 89–80 (1989–2 C.B. 394) clarified the branch-level interest tax rules, announced certain changes to those rules for taxable years beginning on or after January 1, 1990, and modified certain of the qualified resident rules.

After consideration of all the comments relating to § § 1.844–0T, 1.844–1T, 1.844–4T, and 1.844–5T, these sections of the temporary regulations are adopted by this Treasury Decision as final regulations. The comments and revisions relating to these sections are discussed below. Section 1.844–2T is also amended by these regulations.

Explanation of the Provisions

I. Branch Profits Tax

A. Foreign Governments

Under section 892(a)(3) (added to the Code by the Technical and Miscellaneous Revenue Act of 1988), a foreign government is treated as a corporate resident of its country for all purposes of the Internal Revenue Code. The final regulations under § 1.844–0 provide that a foreign government is treated as a foreign corporation for purposes of section 884 and is subject to the branch profits tax and the branch-level interest tax. This amendment to the regulations will be effective for taxable years of a foreign government ending on or after September 11, 1992. However, for the first taxable year ending on or after September 11, 1992, no branch profits tax shall be imposed with respect to effectively connected earnings and profits ("ECEP") of a foreign government earned prior to such date or with respect to decreases in U.S. net equity of a foreign government attributable to the portion of the taxable year prior to such date. Nor shall the tax on branch interest or excess interest apply to interest apportioned to the effectively connected income of the foreign government that has been paid or accrued by its U.S. trade or business prior to such date. Pending issuance of final regulations under § 1.882–5, a foreign government may apply the rules in the proposed regulations under § 1.882–5, issued at 57 FR 15038 (April 24, 1992), to determine the amount of its U.S. liabilities for purposes of § 1.844–1 and for purposes of determining its interest expense apportioned to its income that is (or is treated as) effectively connected with its U.S. trade or business for purposes of applying § 1.844–4 of the regulations.

B. U.S. Assets

The rules regarding the definition of U.S. assets have been reorganized for purposes of clarity and revised as discussed below.

1. United States Real Property Interests

A United States real property interest that does not meet the general definition of a U.S. asset under § 1.884–1(d)(1) is no longer treated as a U.S. asset under the special rules of § 1.884–1(d)(2). For example, if a foreign corporation owns non-income producing real property in the United States, such as raw land or a condominium not used in the foreign corporation's trade or business, the property shall not be treated as a U.S. asset of the foreign corporation. The elimination of real property not used in a trade or business as a U.S. asset allows a foreign corporation to make a passive investment in real property in the United States without incurring a branch profits tax on the amount of its initial investment in the United States. Only subsequent appreciation recognized on a disposition of the investment will be subject to the tax. The rule is also consistent generally with the proposed regulations under § 1.882–5 that excludes United States real property interests not used in a trade or business from the definition of U.S. assets for purposes of computing a foreign corporation's interest expense, other than in the year of disposition.

2. Installment Obligations

Taxpayers commented that the rule in § 1.884–1T(d)(7) (relating to the amount of an installment obligation treated as a U.S. asset) inappropriately treats installment obligations arising in taxable years beginning prior to the effective date of the branch profits tax in the same manner as those arising after such date. The final regulations in § 1.884–1(d)(6)(ii)(B) provide that an installment obligation arising from a sale of a U.S. asset occurring in a taxable year prior to January 1, 1987, will have a zero basis (for purposes of computing earnings and profits) ("E&P basis").

The final regulations in § 1.884–1(d)(2)(iii) provide also that if interest or original issue discount received by a foreign corporation on an installment

obligation is not effectively connected with the conduct of a U.S. trade or business, the obligation will not be treated as a U.S. asset. Thus, a decrease in U.S. assets, and a dividend equivalent amount could arise in the year of an installment sale if the interest on the obligation does not give rise to effectively connected income. However, a foreign corporation may elect to treat the interest or original issue discount as effectively connected with the conduct of a trade or business in the United States if the interest or original issue discount would not otherwise be so considered. The U.S. asset rule for installment obligations now conforms more closely to the treatment of U.S. assets generally: An asset is a U.S. asset only if all the income and gain from the asset is (or is treated as) income effectively connected with the conduct of a trade or business in the United States. The rule also parallels the treatment of interest received on installment obligations held by domestic subsidiaries of foreign corporations. Since an installment obligation is generally no longer treated as a U.S. asset, a foreign corporation may completely terminate its U.S. trade or business, within the meaning of § 1.884–2T(a), while holding an installment obligation provided all other requirements of that section have been met.

3. Marketable Securities

The rules of § 1.884–1T(d)(8) describing when marketable securities will be treated as U.S. assets have been replaced by three separate rules in § 1.884–1(d)(2) (v) through (vii): One for bank deposits and credit balances, whether or not interest-bearing; a second for debt instruments; and a third for certain stock or securities owned by foreign corporations engaged in the active conduct of a banking, financing, or similar business in the United States, to the extent that such stock or securities do not otherwise qualify as U.S. assets under the general rule. The rules of § 1.884–1T(d)(8) that are relevant for an election by a foreign corporation to remain engaged in a U.S. trade or business under § 1.884–2T(a) have been moved to that section.

4. Expansion Capital

The expansion capital election provided in § 1.884–1T(d)(11) was intended to permit a foreign corporation to treat cash in excess of working capital as a U.S. asset so that it could accumulate earnings for later capital investment. The election was also intended to provide relief to a foreign corporation that sold a major U.S. asset shortly before the close of the year and was unable to purchase a substitute U.S. asset before the end of the year. Taxpayers commented that the election as drafted in the temporary regulations does not provide the intended relief because an expansion capital asset is treated as a U.S. asset for all purposes of section 884. Thus, a foreign corporation's U.S. liabilities increase proportionately with the amount of expansion capital elected and the foreign corporation cannot in fact increase its U.S. net equity on a dollar-for-dollar basis. Taxpayers also criticized the rule because it does not permit a foreign corporation to convert expansion capital into "real" U.S. assets during the course of the taxable year.

In response to the comments, the expansion capital election has been replaced with an election to reduce liabilities (discussed below). The election to reduce liabilities will accomplish many of the same objectives of the expansion capital election, but without the complexity of a properly drafted expansion capital rule.

5. Interest in a Trust or Estate

Section 1.884–1(d)(4) of the final regulations (relating to an interest in a trust or estate) has been reserved. Proposed regulations relating to this paragraph are being issued simultaneously with these final regulations.

6. U.S. Assets of Insurance Companies

Section 1.884–1T(g) provides a special rule for the computation of U.S. assets of an insurance company that includes in taxable income effectively connected net investment income computed under section 842(b). Taxpayers have commented that the rule produces significant fluctuations in the amount of U.S. assets of an insurance company from year to year, because an insurance company may or may not be subject to the special rule in a given year, and the amount of U.S. assets produced by the formula each year will vary depending on the profitability of the U.S. branch of the insurance company vis-a-vis the profitability of the company worldwide.

A number of alternative rules were considered that would have imputed an amount of U.S. assets to correspond to the additional net investment income computed under section 842(b). Because of the complexity of the other options and the problems inherent in § 1.884–1T(g), the special rule was deleted and the final regulations provide that foreign insurance companies will be subject to the same U.S. asset rules as all other foreign corporations.

C. U.S. Liabilities

1. U.S. Liabilities of an Insurance Company

The final regulations add a rule to clarify that an insurance company's U.S. liabilities include the amount of its total insurance liabilities on United States business within the meaning of section 842(b)(2)(B), as well as any other U.S.-connected liabilities determined under § 1.882–5.

2. Election to Reduce U.S. Liabilities

Under § 1.884–1T(e), a foreign corporation is required to compute its U.S. liabilities by multiplying its U.S. assets by the ratio of its worldwide liabilities to worldwide assets, or, if the foreign corporation computes the amount of its interest expense under § 1.882–5 using a fixed ratio of liabilities to assets, then by such fixed ratio. The use of this formulary approach to determine U.S. liabilities is retained in § 1.884–1(e) of the final regulations, with some minor adjustments. Taxpayers commented, however, that the formulary approach creates a hardship in certain circumstances, because a foreign corporation may reinvest all of its effectively connected earnings and profits in its U.S. trade or business and still have a dividend equivalent amount.

In response to this concern and as a replacement for expansion capital, the final regulations under § 1.884–1(e)(3) allow a foreign corporation to elect annually to reduce the amount of its U.S. liabilities for purposes of both §§ 1.884–1 and 1.884–4 down to the amount of liabilities actually shown on the books of the U.S. trade or business for purposes of § 1.882–5(b)(3) as of the last day of the taxable year. In return, a taxpayer must permanently forego the interest deduction attributable to the reduction in liabilities.

The election to reduce liabilities is similar to the expansion capital election because it would permit a foreign corporation to accumulate earnings to expand its U.S. trade or business. For example, if a foreign corporation has $50 of ECEP, it can retain $50 for expansion of its U.S. trade or business without triggering a $50 dividend equivalent amount if it elects to reduce its U.S. liabilities by $50, thereby increasing its U.S. net equity by $50.

If, however, a foreign corporation does not ultimately reinvest the retained earnings created by the election in additional U.S. assets, it will be required to recapture that amount in a year of complete termination, notwithstanding the complete termination rules in § 1.884–2T(a).

The election was also suggested by foreign corporations whose U.S. trades or businesses produce effectively connected losses. Although a foreign corporation with an effectively connected loss for a taxable year would generally not have a branch tax liability in that year, the interest apportioned to its effectively connected income would still be treated as U.S. source interest under section 884. Such a corporation may prefer to forego the interest deduction rather than be treated as paying U.S. source interest.

D. Treaty-Related Issues

The final regulations under § 1.884–1(g)(4)(iii) clarify the branch profits tax consequences for a foreign corporation with ECEP attributable to both a permanent establishment and a non-permanent establishment. The regulations in § 1.884–1(g)(1) also clarify that if a foreign corporation has more than one trade or business in the United States, and meets the requirements of the active trade or business test described in § 1.884–5(e) with respect to only one of the trades or businesses, the branch profits tax treaty benefits only apply to the ECEP related to the one trade or business. See, however, the new de minimis rule described in the active trade or business test (below).

II. Branch-Level Interest Tax

The final regulations under § 1.884–4 were revised to incorporate the rules announced in Notices 89–14 and 89–80. In response to taxpayers' comments, other technical changes were made in this section relating to the special rules for interest paid and excess interest. For purposes of the final regulations, interest paid by a U.S. trade or business is referred to as "branch interest".

A. Branch Interest of Banks

Notice 89–80 sets forth a new definition of branch interest of banks for taxable years beginning after January 1, 1990. Under this definition, branch interest of a bank includes interest paid with respect to certain liabilities of offshore "shell" branches of foreign banks. A liability of a shell branch does not give rise to branch interest, however, unless the bank notifies its depositors within two months following the close of the calendar year that the interest they have received from the shell branch is U.S. source.

Taxpayers criticized the notification requirement, however, because they believed it placed foreign banks in a competitive disadvantage vis-a-vis domestic banks that were not required to notify their shell branch depositors of the source of their interest payments. In response, the final regulations delete the notification requirements for banks. No inference should be drawn from this regulation regarding the source of interest received or paid with respect to shell branch liabilities. The Service is studying the circumstances under which a foreign branch of a domestic bank should be treated as a shell branch and not engaged in commercial banking business for purposes of section 861(a)(1)(B)(i). Comments are invited on this issue.

B. Nondeductible Interest

Section 1.884–4T(a)(2) of the temporary regulations defines excess interest as the excess of the amount of interest allowable as a deduction to the foreign corporation in computing its effectively connected taxable income under § 1.882–5 over the amount of interest paid by the U.S. trade or business, not including nondeductible amounts of branch interest. The final regulations define excess interest generally as the excess of the amount of interest apportioned to the effectively connected income of a foreign corporation under § 1.882–5, after application of § 1.884–1(e)(3) (relating to the election to reduce liabilities), over the foreign corporation's branch interest. The reference to nondeductible interest was deleted because the amount of interest expense apportioned to effectively connected income under § 1.882–5 includes both deductible and nondeductible interest. Provisions that permanently disallow or defer a deduction or result in the capitalization of interest expense apply after interest expense is apportioned to effectively connected income under § 1.882–5.

C. Excess Interest

The Treasury Department has concluded that the tax on excess interest is not prohibited by the nondiscrimination provision or any other provision in any income tax treaty to which the United States is a party.

III. Qualified Resident Rules

A majority of the comments with respect to this section related to clarifying and liberalizing the three "qualified resident" tests: The stock ownership and base erosion test, the publicly-traded test, and the active trade or business test.

A. Stock Ownership and Base Erosion Test

In the final regulations under § 1.884–5(b), a foreign corporation will satisfy the stock ownership test if more than 50 percent of its stock is beneficially owned by qualifying shareholders (individuals, governments, publicly-traded corporations, not-for-profit organizations and beneficiaries of certain pension trusts resident in the United States or the country of residence of the foreign corporation). As under the temporary regulations, a foreign corporation is required to obtain ownership statements from its qualifying shareholders showing the ownership of its stock by the due date of the corporation's return (including extensions). In addition, each individual shareholder (other than a U.S. citizen or resident) must obtain a certificate of residency from his or her Competent Authority or other relevant authority annually and submit it with the stock ownership statement. If a qualifying shareholder does not directly own stock in the foreign corporation seeking qualified resident status, both the qualifying shareholder and the intermediary in which it does have an interest must submit the appropriate documentation to the foreign corporation. Each intermediary must also submit sufficient information for the foreign corporation to determine the amount of stock (by value) that the qualifying shareholder (or other intermediary) beneficially owns in that intermediary for the requisite time period. The amount of information required has been streamlined where possible. The rules permitting intermediary verification statements as substitutes for certain documentation have been retained.

1. Form of Documentation

Commentators criticized as burdensome the documentation requirements, suggesting that documentation be required only once every three years, or that a resident tax return be provided in lieu of a certificate of residency. In response to these comments, the final regulations under § 1.884–5(b)(3)(iii) ease the documentation requirements for certain widely-held corporations, including mutual savings banks and insurance companies. If such a foreign corporation has at least 250 individual owners, it need not obtain ownership statements and certificates of residency from those of its owners that own less than one percent of the equity of the corporation and may generally rely instead on such individual owners' addresses of record.

2. Special Attribution Rules

Special attribution rules for stock owned by pension trusts were issued in Notice 89–80. Those rules have been incorporated into the regulations in § 1.884–5(b)(8) and expanded to cover

pension funds and other entities that provide pension benefits. The regulations under § 1.884–5(b)(2) also provide attribution rules for determining the ownership of mutual insurance companies, savings banks, and other similar non-stock entities, and revise the attribution rules for corporations and partnerships generally.

3. Documentation Received After Filing of Return

The final regulations will continue to require that the documentation be received by the due date of the return (including extensions). However, § 1.884–5(b)(3)(v) provides that, on a showing of good cause in a petition (prior to examination) to the District Director or Assistant Commissioner (International), as appropriate, a foreign corporation may be granted the right to perfect its documentation after the due date of the return (including extensions).

4. Base Erosion

Taxpayers commented that the base erosion test in § 1.884–5T(c) is too broad because the test treats as base eroding payments all deductible payments, including bona fide payments at arms' length to unrelated persons. The test has been retained in large part, however, because of the difficulty in administering a rule that would exclude such payments. It should be noted that payments by a foreign corporation included in its cost of goods sold are not considered base eroding payment since such payments are excluded from gross income.

B. Publicly-Traded Test

A foreign corporation can be a qualified resident of its country of residence if its stock is both primarily and regularly traded on an established securities market in its country of residence. With respect to the regularly traded portion of the test, taxpayers commented that the minimum turnover requirement for a class of stock in the temporary regulations was too high for many corporations listed on established securities exchanges. Consistent with Notice 89–80, the final regulations lower the turnover requirement for all corporations from 30 percent to 10 percent and the 10 percent rate is adopted in the final regulations in § 1.884–5(d)(4)(i)(B)(*2*).

The final regulations also liberalize the closely-held exception to the regularly traded test. Under § 1.884–5T(d)(4)(ii), a class of stock that is otherwise regularly traded will not meet the test if 100 or fewer persons own 50 percent or more of the stock. The final regulations under § 1.884–5(d)(4)(iii) treat a class of stock as closely held if 50 percent or more of the stock is beneficially owned by one or more five percent shareholders who are not qualifying shareholders. The test applies to both domestic and foreign corporations. The regulations under § 1.884–5(d)(5) clarify that corporations with registered shareholders can sustain the burden of proof with respect to the closely-held test if they maintain a list of their registered shareholders and have no knowledge and no reason to know that their stock is closely held. Corporations with bearer shares can meet the burden of proof with respect to this test as long as they have no knowledge and no reason to know that their stock is closely held. No inference should be drawn from this regulation regarding the definition of "property where there is public trading" for purposes of section 1273(b)(3).

C. Active Trade or Business Test

The active trade or business test generally requires that a foreign corporation have both an active and substantial business in its home country and that the trade or business that gives rise to the income for which a treaty benefit is claimed is an integral part of the home country business. The temporary regulations generally require that a minimum percentage of the foreign corporation's assets, income, and payroll be in the treaty country to meet the substantial presence portion of the test.

Commentators raised a number of issues regarding the regulation's standards for determining whether a foreign corporation has a substantial presence in its home country. In particular, it was argued that certain types of businesses, particularly trading companies, will frequently be unable to meet the minimum percentage of assets and income in the treaty country, although they may meet the payroll test. The suggestions made by commentators would have placed excessive weight on the payroll test, however, and thus were not adopted. While the final regulations retain the minimum asset and income ratios, they do provide an alternative to the income ratio for certain corporations. A foreign corporation engaged in selling tangible property or in manufacturing, producing, growing or extracting tangible property may use the ratio of its direct material costs attributable to tangible property manufactured, produced, grown or extracted in its country of residence to its total cost of goods sold rather than the ratio of its income derived from its country of residence to total income in computing whether it has a substantial presence in the treaty country.

Through the private letter ruling process, it was determined that the active trade or business test should also be available to foreign groups that form a wholly-owned subsidiary in their country of residence to conduct the U.S. operations of the group. In such a case, the subsidiary corporation could not have a substantial presence in its country of residence, nor could its U.S. business be integrated with a foreign trade or business, although its affiliated group as a whole might have a substantial presence in the subsidiary's country of residence and the U.S. business might be an integral part of the business conducted by one or more of the other corporations included in that group. In response to this situation, a rule has been added to the active trade or business test that would allow a foreign corporation to apply the active trade or business test to its entire affiliated group within the meaning of section 1504(a), but without regard to the exclusions under section 1504(b) (2) and (3), rather than just to the foreign corporation alone.

With respect to the integral part requirement of the active trade or business test, the temporary regulations provide that the U.S. and foreign business must be "complementary and mutually interdependent steps * * * in the production and sale or lease of goods or in the provision of services". The temporary regulations also provide a presumption that a U.S. branch of a foreign bank will be treated as an integral part of the foreign bank's activities if more than 50 percent of its loans to the public are to residents in the home country. The final regulations modify the presumption with regard to a bank so that a bank can meet the integral part test provided a substantial part of its business in its country of residence consists of receiving deposits and making loans and discounts. The final regulations also provide a rule that allows a foreign corporation with more than one trade or business in the United States to meet the integral part test with respect to all such trades or businesses provided that at least 80 percent of the foreign corporation's ECEP for a three-year period is attributable to one or more of such trades or businesses that would meet the test.

D. Ruling Process

The ruling process was designed to assist the Service in determining the extent to which the stock ownership test, publicly-traded test and active trade or business test did not adequately

deal with the range of corporations seeking qualified resident status. Many of the issues raised by the rulings have been addressed by changes in the final regulations. The Service recognizes that there are still cases that have to be handled individually, and the regulations retain a ruling request procedure for situations in which corporations do not meet any of the other tests, provided that the ruling request is filed by the due date (including extensions) of the return for the taxable year. The final regulations also indicate with greater specificity some of the factors that will be considered in issuing a ruling.

IV. Complete Termination, Liquidation or Reorganization of a Foreign Corporation

Section 1.884–2T(a)(2)(ii) provides that a foreign corporation must extend the period for assessment of the branch profits tax for the year of complete termination to a date not earlier than the sixth taxable year following that taxable year. Section 1.884–2T(c)(2)(iii) provides that a foreign corporation must also extend the period for assessment of the branch profits tax if it liquidates or reorganizes as part of a section 381(a) transaction and the transferee is a domestic corporation. These regulations provide guidance concerning compliance with this waiver requirement until such time as forms are published.

V. Effective Dates

Except as otherwise provided, the final regulations are effective for taxable years beginning on or after October 13, 1992. Taxpayers may elect, however, to apply § 1.884–1 together with § 1.884–4 to taxable years beginning after December 31, 1986 and before the effective date of these regulations, provided certain conditions are met. Taxpayers may also separately elect to apply § 1.884–5 retroactively to such date, provided certain conditions are met.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Elizabeth U. Karzon, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service and Richard M. Elliott, formerly of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from that office and other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.881–1 Through 1.884–5

Foreign investments in United States, Income taxes.

Adoption of Amendments to the Regulations

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

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

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "Sections 1.884–OT through 1.884–5T", "Section 1.884–1T (d)", "Section 1.884–1T (e)" and "Section 1.884–5T (e) and (f)" and adding the following citations to read as follows:

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

Section 1.884–0 also issued under 26 U.S.C. 884 (g).

Section 1.884–1 also issued under 26 U.S.C. 884 (g).

Section 1.884–1 (d) also issued under 26 U.S.C. 884 (c) (2) (A).

Section 1.884–1 (d) (13) (i) also issued under 26 U.S.C. 884 (c) (2).

Section 1.884–1 (e) also issued under 26 U.S.C. 884 (c) (2) (B).

Section 1.884–2T also issued under 26 U.S.C. 884 (g).

Section 1.884–4 also issued under 26 U.S.C. 884 (g).

Section 1.884–5 also issued under 26 U.S.C. 884 (g).

Section 1.884–5 (e) and (f) also issued under 26 U.S.C. 884 (e) (4) (C). * * *

§§ 1.884–OT, 1.884–1T, 1.884–4T, and 1.884–5T [Removed]

Par. 2. Sections 1.884–OT, 1.884–1T, 1.884–4T and 1.884–5T are removed.

§§ 1.884–0 and 1.884–1 [Added]

Par. 3. Sections 1.884–0 and 1.884–1 are added to read as follows:

§ 1.884–0 Overview of regulation provisions for section 884.

(a) *Introduction.* Section 884 consists of three main parts: a branch profits tax on certain earnings of a foreign corporation's U.S. trade or business; a branch-level interest tax on interest paid, or deemed paid, by a foreign corporation's U.S. trade or business; and an anti-treaty shopping rule. A foreign corporation is subject to section 884 by virtue of owning an interest in a partnership, trust, or estate that is engaged in a U.S. trade or business or has income treated as effectively connected with the conduct of a trade or business in the United States. An international organization (as defined in section 7701(a)(18)) is not subject to the branch profits tax by reason of section 884(e)(5). A foreign government treated as a corporate resident of its country of residence under section 892(a)(3) shall be treated as a corporation for purposes of section 884. The preceding sentence shall be effective for taxable years ending on or after September 11, 1992, except that, for the first taxable year ending on or after that date, the branch profits tax shall not apply to effectively connected earnings and profits of the foreign government earned prior to that date nor to decreases in the U.S. net equity of a foreign government occurring after the close of the preceding taxable year and before that date. Similarly, § 1.884–4 shall apply, in the case of branch interest, only with respect to amounts of interest accrued and paid by a foreign government on or after that date, or, in the case of excess interest, only with respect to amounts attributable to interest accrued by a foreign government on or after that date and apportioned to ECI, as defined in § 1.884–1(d)(1)(iii). Except as otherwise provided, for purposes of the regulations under section 884, the term "U.S. trade or business" includes all the U.S. trades or businesses of a foreign corporation.

(1) *The branch profits tax.* Section 1.884–1 provides rules for computing the branch profits tax and defines various terms that affect the computation of the tax. In general, section 884(a) imposes a 30-percent branch profits tax on the after-tax earnings of a foreign corporation's U.S. trade or business that are not reinvested in a U.S. trade or business by the close of the taxable year, or are disinvested in a later taxable year. Changes in the value of the equity of the foreign corporation's U.S. trade or business are used as the measure of whether earnings have been reinvested in, or disinvested form, a U.S. trade or business. An increase in the equity during the taxable year is

generally treated as a reinvestment of the earnings for the current taxable year; a decrease in the equity during the taxable year is generally treated as a disinvestment of prior years' earnings that have not previously been subject to the branch profits tax. The amount subject to the branch profits tax for the taxable year is the dividend equivalent amount. Section 1.884–2T contains special rules relating to the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(2) *The branch-level interest tax.* Section 1.884–4 provides rules for computing the branch-level interest tax. In general, interest paid by a U.S. trade or business of a foreign corporation ("branch interest", as defined in § 1.884–4(b)) is treated as if it were paid by a domestic corporation and may be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442. In addition, if the interest apportioned to ECI exceeds branch interest, the excess is treated as interest paid to the foreign corporation by a wholly-owned domestic corporation and is subject to tax under section 881(a).

(3) *Qualified resident.* Section 1.884–5 provides rules for determining whether a foreign corporation is a qualified resident of a foreign country. In general, a foreign corporation must be a qualified resident of a foreign country with which the United States has an income tax treaty in order to claim an exemption or rate reduction with respect to the branch profits tax, the branch-level interest tax, and the tax on dividends paid by the foreign corporation.

(b) *Outline of major topics in §§ 1.884–1 through 1.884–5.*

§ 1.884–1 Branch profits tax.

(a) General rule.
(b) Dividend equivalent amount.
  (1) Definition.
  (2) Adjustment for increase in U.S. net equity.
  (3) Adjustment for decrease in U.S. net equity.
  (4) Examples.
(c) U.S. net equity.
  (1) Definition.
  (2) Definition of amount of a U.S. asset.
  (3) Definition of determination date.
(d) U.S. assets.
  (1) Definition of a U.S. asset.
  (2) Special rules for certain assets.
  (3) Interest in a partnership.
  (4) Interest in a trust or estate. [Reserved]
  (5) Property that is not a U.S. asset.
  (6) E&P basis of a U.S. asset.
(e) U.S. liabilities.
  (1) Liabilities based on § 1.882–5.
  (2) Insurance reserves.
  (3) Election to reduce liabilities.
  (4) Artificial decrease in U.S. liabilities.
  (5) EExamples.
(f) Effectively connected earnings and profits.
  (1) In general.
  (2) Income that does not produce ECEP.
  (3) Allocation of deductions attributable to income that does not produce ECEP.
  (4) Examples.
(g) Corporations resident in countries with which the United States has an income tax treaty.
  (1) General rule.
  (2) Special rules for foreign corporations that are qualified residents on the basis of their ownership.
  (3) Exemptions for foreign corporations resident in certain countries with income tax treaties in effect on January 1, 1987.
  (4) Modifications with respect to other income tax treaties.
  (5) Benefits under treaties other than income tax treaties.
(h) Stapled entities.
(i) Effective date.
  (1) General rule.
  (2) Election to reduce liabilities.
  (3) Separate election for installment obligations.
(j) Transition rules.
  (1) General rule.
  (2) Installment obligations.

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

(a) Complete termination of a U.S. trade or business.
  (1) General rule.
  (2) Operating rules.
  (3) Complete termination in the case of a section 338 election.
  (4) Complete termination in the case of a foreign corporation with income under section 864(c)(6) or 864(c)(7).
  (5) Coordination with second-level withholding tax.
(b) Election to remain engaged in a U.S. trade or business.
  (1) General rule.
  (2) Marketable security.
  (3) Identification requirements.
  (4) Treatment of income from deemed U.S. assets.
  (5) Method of election.
  (6) Effective date.
(c) Liquidation, reorganization, etc. of a foreign corporation.
  (1) Inapplicability of paragraph (a)(1) to section 381 (a) transactions.
  (2) Transferor's dividend equivalent amount for the taxable year in which a section 381 (a) transaction occurs.
  (3) Transferor's dividend equivalent among for any taxable year succeeding the taxable year in which the section 381 (a) transaction occurs.
  (4) Earnings and profits of the transferor carried over to the transferee pursuant to the section 381 (a) transaction.
  (5) Determination of U.S. net equity of a transferee that is a foreign corporation.
  (6) Special rules in the case of the disposition of stock or securities in a domestic transferee or in the transferor.
(d) Incorporation under section 351.
  (1) In general.
  (2) Inapplicability of paragraph (a)(1) of this section to section 351 transactions.
  (3) Transferor's dividend equivalent amount for the taxable year in which a section 351 transaction occurs.
  (4) Election to increase earnings and profits.
  (5) Dispositions of stock or securities of the transferee by the transferor.
  (6) Example.
(e) Certain transactions with respect to a domestic subsidiary.
(f) Effective date.

§ 1.884–3T Coordination of branch profits tax with secondtier withholding (temporary). [Reserved]

§ 1.884–4 Branch-level interest tax.

(a) General rule.
  (1) Tax on branch interest.
  (2) Tax on excess interest.
  (3) Original issue discount.
  (4) Examples.
(b) Branch interest.
  (1) Definition of branch interest of a foreign corporation that is not a bank.
  (2) Definition of branch interest of a bank.
  (3) Requirements relating to specifically identified liabilities.
  (4) Interbranch interest disregarded.
  (5) Increase in branch interest where U.S. assets constitute 80 percent or more of a foreign corporation's assets.
  (6) Special rule where branch interest exceeds interest apportioned to ECI of a foreign corporation.
  (7) Effect of election under paragraph (c)(1) of this section to treat interest as if paid in year of accrual.
  (8) Effect of treaties.
(c) Rules relating to excess interest.
  (1) Election to compute excess interest by treating branch interest that is paid and accrued in different years as if paid in year of accrual.
  (2) Interest paid by a partnership.
  (3) Effect of treaties.
  (4) Examples.
(d) Stapled entities.
(e) Effective dates.
(f) Transition rules.
  (1) Election under paragraph (c)(1) of this section.
  (2) Waiver of notification requirement for nonbanks under Notice 89–80.
  (3) Waiver of legending requirement for certain debt issued prior to January 3, 1989.

§ 1.884–5 Qualified resident.

(a) Definition of qualified resident.
(b) Stock ownership requirement.
  (1) General rule.
  (2) Rules for determining constructive ownership.
  (3) Required documentation.
  (4) Ownership statements from qualifying shareholders.
  (5) Certificate of residency.
  (6) Intermediary ownership statement.
  (7) Intermediary verification statement.
  (8) Special rules for pension funds.

(9) Availability of documents for inspection.
(10) Examples.
(c) Base erosion.
(d) Publicly-traded corporations.
(1) General rule.
(2) Established securities market.
(3) Primary traded.
(4) Regularly traded.
(5) Burden of proof for publicly-traded corporations.
(e) Active trade or business.
(1) General rule.
(2) Active conduct of a trade or business.
(3) Substantial presence test.
(4) Integral part of an active trade or business in the foreign corporation's country of residence.
(f) Qualified resident ruling.
(1) Basis for ruling.
(2) Factors.
(3) Procedural requirements.
(g) Effective dates.
(h) Transition rule.

§ 1.884–1 Branch profits tax.

(a) *General rule.* A foreign corporation shall be liable for a branch profits tax in an amount equal to 30 percent of the foreign corporation's dividend equivalent amount for the taxable year. The branch profits tax shall be in addition to the tax imposed by section 882 and shall be reported on a foreign corporation's income tax return for the taxable year. The tax shall be due and payable as provided in section 6151 and such other provisions of Subtitle F of the Internal Revenue Code as apply to the income tax liability of corporations. However, no estimated tax payments shall be due with respect to a foreign corporation's liability for the branch profits tax. See paragraph (g) of this section for the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty, and § 1.884–2T for the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business, or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(b) *Dividend equivalent amount*—(1) *Definition.* The term "dividend equivalent amount" means a foreign corporation's effectively connected earnings and profits ("ECEP", as defined in paragraph (f)(1) of this section) for the taxable year, adjusted pursuant to paragraph (b) (2) or (3) of this section, as applicable. The dividend equivalent amount cannot be less than zero.

(2) *Adjustment for increase in U.S. net equity.* If a foreign corporation's U.S. net equity (as defined in paragraph (c) of this section) as of the close of the taxable year exceeds the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's ECEP for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(3) *Adjustment for decrease in U.S. net equity*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, if a foreign corporation's U.S. net equity as of the close of the taxable year is less than the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's ECEP for the taxable year shall be increased by the amount of such difference.

(ii) *Limitation based on accumulated ECEP.* The increase of a foreign corporation's ECEP under paragraph (b)(3)(i) of this section shall not exceed the accumulated ECEP of the foreign corporation as of the beginning of the taxable year. The term "accumulated ECEP" means the aggregate amount of ECEP of a foreign corporation for preceding taxable years beginning after December 31, 1986, minus the aggregate dividend equivalent amounts for such preceding taxable years. Accumulated ECEP may be less than zero.

(4) *Examples.* The principles of paragraph (b) (2) and (3) of this section are illustrated by the following examples.

Example 1. Reinvestment of all ECEP. Foreign corporation A, a calender year taxpayer, had $1,000 U.S. net equity as of the close of 1986 and $100 of ECEP for 1987. A acquires $100 of additional U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,100. In computing A's dividend equivalent amount for 1987, A's ECEP of $100 is reduced under paragraph (b)(2) of this section by the $100 increase in U.S. net equity between the close of 1986 and the close of 1987. A has no dividend equivalent amount for 1987.

Example 2. Partial reinvestment of ECEP. Assume the same facts as in *Example 1* except that A acquires $40 (rather than $100) of U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,040. In computing A's dividend equivalent amount for 1987, A's ECEP of $100 is reduced under paragraph (b)(2) of this section by the $40 increase in U.S. net equity between the close of 1986 and the close of 1987. A has a dividend equivalent amount of $60 for 1987.

Example 3. Disinvestment of prior year's ECEP. Assume the same facts as in *Example 1* for 1987. A has no ECEP for 1988. A's U.S. net equity decreases by $40 (to $1,060) as of the close of 1988. A has a dividend equivalent amount of $40 for 1988, even though it has no ECEP for 1988. A's ECEP of $0 for 1988 is increased under paragraph (b)(3)(i) of this section by the $40 reduction in U.S. net equity (subject to the limitation in paragraph (b)(3)(ii) of this section of $100 of accumulated ECEP).

Example 4. Accumulated ECEP limitation. Assume the same facts as in *Example 2* for 1987. For 1988, A has $125 of ECEP and its U.S. net equity decreases by $50. A's U.S. net equity as of the close of 1988 is $990 ($1,040–$50). In computing A's dividend equivalent amount for 1988, the $125 of ECEP for 1988 is not increased under paragraph (b)(3)(i) of this section by the full amount of the $50 decrease in U.S. net equity during 1988. Rather, the increase in ECEP resulting from the decrease in U.S. net equity is limited to A's accumulated ECEP as of the beginning of 1988. A had $100 of ECEP for 1987 and a dividend equivalent amount of $60 for that year, so A had $40 of accumulated ECEP as of the beginning of 1988. The increase in ECEP resulting from a decrease in U.S. net equity is thus limited to $40, and the dividend equivalent amount for 1988 is $165 ($125 ECEP + $40 decrease in U.S. net equity).

Example 5. Effect of deficits in ECEP. Foreign corporation A, a calendar year taxpayer, has $150 of accumulated ECEP as of the beginning of 1991 ($200 aggregate ECEP less $50 aggregate dividend equivalent amounts for years preceding 1991). A has U.S. net equity of $450 as of the close of 1990, U.S. net equity of $350 as of the close of 1991 (i.e., a $100 decrease in U.S. net equity) and a $90 deficit in ECEP for 1991. A's dividend equivalent amount is $10 for 1991, i.e., A's deficit of $90 in ECEP for 1991 increased by $100, the decrease in A's U.S. net equity during 1991. A portion of the reduction in U.S. net equity in 1991 ($90) is attributable to A's deficit in ECEP for that year. The reduction in U.S. net equity in 1991 ($100) triggers a dividend equivalent amount only to the extent it exceeds the $90 current year deficit in ECEP for 1991. As of the beginning of 1992, A has $50 of accumulated ECEP (i.e., 110 aggregate ECEP less $60 aggregate dividend equivalent amounts for years preceding 1992).

Example 6. Nimble dividend equivalent amount. Foreign corporation A, a calendar year taxpayer, had a deficit in ECEP of $100 for 1987 and $100 for 1988, and has $90 of ECEP for 1989. A had $2,000 U.S. net equity as of the close of 1988 and has $2,000 U.S. net equity as of the close of 1989. A has a dividend equivalent amount of $90 for 1989, its ECEP for the year, even though it has a net deficit of $110 in ECEP for the period 1987–1989.

(c) *U.S. net equity*—(1) *Definition.* The term "U.S. net equity" means the aggregate amount of the U.S. assets (as defined in paragraphs (c)(2) and (d)(1) of this section) of a foreign corporation as of the determination date (as defined in paragraph (c)(3) of this section), reduced (including below zero) by the U.S. liabilities (as defined in paragraph (e) of this section) of the foreign corporation as of the determination date.

(2) *Definition of the amount of a U.S. asset.* For purposes of this section, the term "amount of a U.S. asset" means the

U.S. asset's adjusted basis for purposes of computing earnings and profits ("E&P basis") multiplied by the proportion of the asset that is treated as a U.S. asset under paragraphs (d) (1) through (4) of this section. The amount of a U.S. asset that is money shall be its face value. See paragraph (d)(6) of this section for rules concerning the computation of the E&P basis of a U.S. asset.

(3) *Definition of determination date.* For purposes of this section, the term "determination date" means the close of the day on which the amount of U.S. net equity is required to be determined. Unless otherwise provided, the U.S. net equity of a foreign corporation is required to be determined as of the close of the foreign corporation's taxable year.

(d) *U.S. assets*—(1) *Definition of a U.S. asset*—(i) *General rule.* Except as provided in paragraph (d)(5) of this section, the term "U.S. asset" means an asset of a foreign corporation (other than an interest in a partnership, trust, or estate) that is held by the corporation as of the determination date if—

(A) All income produced by the asset on the determination date is ECI (as defined in paragraph (d)(1)(iii) of this section) (or would be ECI if the asset produced income on that date); and

(B) All gain from the disposition of the asset would be ECI if the asset were disposed of on that date and the disposition produced gain.

For purposes of determining whether income or gain from an asset would be ECI under this paragraph (d)(1)(i), it is immaterial whether the asset is of a type that is unlikely to, or cannot, produce income or gain. For example, money may be a U.S. asset although it does not produce income or gain. In the case of an asset that does not produce income, however, the determination of whether income from the asset would be ECI shall be made under the principles of section 864 and the regulations thereunder, but without regard to § 1.864–4(c)(2)(iii)(*b*). For purposes of determining whether an asset is a U.S. asset under this paragraph (d)(1), a foreign corporation may presume, unless it has reason to know otherwise, that gain from the sale of personal property (including inventory property) would be U.S. source if gain from the sale of that type of property would ordinarily be attributable to an office or other fixed place of business of the foreign corporation within the United States (within the meaning of section 865(e)(2)).

(ii) *Special rules for assets not described in paragraph (d)(1)(i) of this section.* An asset of a foreign corporation that is held by the corporation as of the determination date and is not described in paragraph (d)(1)(i) of this section shall be treated as a U.S. asset to the extent provided in paragraph (d)(2) of this section (relating to special rules for certain assets, including assets that produce income or gain at least a portion of which is ECI), and in paragraphs (d) (3) and (4) of this section (relating to special rules for interests in a partnership, trust, and estate).

(iii) *Definition of ECI.* For purposes of the regulations under section 884, the term "ECI" means income that is effectively connected with the conduct of a trade or business in the United States and income that is treated as effectively connected with the conduct of a trade or business in the United States under any provision of the Code. The term "ECI" also includes all income that is or is treated as effectively connected with the conduct of a U.S. trade or business whether or not the income is included in gross income (for example, interest income earned with respect to tax-exempt bonds).

(2) *Special rules for certain assets*—(i) *Depreciable and amortizable property.* An item of depreciable personal property or an item of amortizable intangible property shall be treated as a U.S. asset of a foreign corporation in the same proportion that the amount of the depreciation or amortization with respect to the item of property that is allowable as a deduction, or is includible in cost of goods sold, for the taxable year in computing the effectively connected taxable income of the foreign corporation bears to the total amount of depreciation or amortization computed for the taxable year with respect to the item of property.

(ii) *Inventory.* An item or pool of inventory property (as defined in section 865(i)(1)) shall be treated as a U.S. asset in the same proportion as the amount of gross receipts from the sale or exchange of such property for the three preceding taxable years (or for such part of the three-year period as the corporation has been in existence) that is effectively connected with the conduct of a U.S. trade or business bears to the total amount of gross receipts from the sale or exchange of such property during such period (or part thereof). If a foreign corporation has not sold or exchanged such property during such three-year period (or part thereof), then the property shall be treated as a U.S. asset in the same proportion that the anticipated amount of gross receipts from the sale or exchange of the property that is reasonably anticipated to be ECI bears to the anticipated total amount of gross receipts from the sale or exchange of the property.

(iii) *Installment obligations.* An installment obligation received in connection with an installment sale (as defined in section 453(b)) for which an election under section 453(d) has not been made shall be treated as a U.S. asset to the extent that it is received in connection with the sale of a U.S. asset. If an obligation is received in connection with the sale of an asset that is wholly a U.S. asset, it shall be treated as a U.S. asset in its entirety. If a single obligation is received in connection with the sale of an asset that is in part a U.S. asset under the rules of paragraphs (d) (2) through (4) of this section, or in connection with the sale of several assets including one or more non-U.S. assets, the obligation shall be treated as a U.S. asset in the same proportion as—

(A) The sum of the amount of gain from the installment sale that would be ECI if the obligation were satisfied in full on the determination date and the adjusted basis of the obligation on such date (as determined under section 453B) attributable to the amount of gain that would be ECI bears to

(B) The sum of the total amount of gain from the sale if the obligation were satisfied in full and the adjusted basis of the obligation on such date (as determined under section 453B).

However, the obligation will only be treated as a U.S. asset if the interest income or original issue discount with respect to the obligation is ECI or the foreign corporation elects to treat the interest or original issue discount as ECI in the same proportion that the obligation is treated as a U.S. asset. A foreign corporation may elect to treat interest income or original issue discount as ECI by reporting such interest income or original issue discount as ECI on its income tax return or an amended return for the taxable year. See paragraph (d)(6)(ii) of this section to determine the E&P basis of an installment obligation for purposes of this paragraph (d)(2)(iii).

(iv) *Receivables*—(A) *Receivables arising from the sale or exchange of inventory property.* An account or note receivable (whether or not bearing stated interest) with a maturity not exceeding six months that arises from the sale or exchange of inventory property (as defined in section 865(i)(1)) shall be treated as a U.S. asset in the proportion determined under paragraph (d)(2)(iii) of this section as if the receivable were an installment obligation.

(B) *Receivables arising from the performance of services or leasing of property.* An account or note receivable (whether or not bearing stated interest)

with a maturity not exceeding six months that arises from the performance of services or the leasing of property in the ordinary course of a foreign corporation's trade or business shall be treated as a U.S. asset in the same proportion that the amount of gross income represented by the receivable that is ECI bears to the total amount of gross income represented by the receivable. For purposes of this paragraph (d)(2)(iv)(B), the amount of income represented by a receivable shall not include interest income or original issue discount.

(v) *Bank and other deposits.* A deposit or credit balance with a person described in section 871(i)(3) or a Federal Reserve Bank that is interest-bearing shall be treated as a U.S. asset if all income derived by the foreign corporation with respect to the deposit or credit balance during the taxable year is ECI. Any other deposit or credit balance shall only be treated as a U.S. asset if the deposit or credit balance is needed in a U.S. trade or business within the meaning of § 1.864–4(c)(2)(iii)(*a*).

(vi) *Debt instruments.* A debt instrument, as defined in section 1275(a)(1) (other than an asset treated as a U.S. asset under any other subdivision of this paragraph (d)) shall be treated as a U.S. asset, notwithstanding the fact that gain from the sale or exchange of the obligation on the determination date would not be ECI, if—

(A) All income derived by the foreign corporation from such obligation during the taxable year is ECI; and

(B) The yield for the period that the instrument was held during the taxable year equals or exceeds the Applicable Federal Rate for instruments of similar type and maturity.

Shares in a regulated investment company that purchases solely instruments that, under this paragraph (d)(2)(vi), would be U.S. assets if held directly by the foreign corporation shall also be treated as a U.S. asset.

(vii) *Stocks or securities held by a foreign corporation engaged in a banking, financing or similar business.* Stocks or securities described in § 1.864–4(c)(5)(ii)(*b*)(*3*) held by a foreign corporation engaged in the active conduct of a banking, financing, or similar business in the United States during the taxable year shall be treated as U.S. assets in the same proportion that income, gain, or loss from such stocks or securities is ECI for the taxable year under § 1.864–4(c)(5)(ii).

(viii) *Federal income taxes.* An overpayment of Federal income taxes shall be treated as a U.S. asset to the extent that the tax would reduce a foreign corporation's ECEP for the taxable year but for the fact that the tax does not accrue during the taxable year.

(ix) *Losses involving U.S. assets.* A foreign corporation that sustains, with respect to a U.S. asset, a loss for which a deduction is not allowed under section 165 (in whole or in part) because there exists a reasonable prospect of recovering compensation for the loss shall be treated as having a U.S. asset ("loss property") from the date of the loss in the same proportion that the asset was treated as a U.S. asset immediately before the loss. See paragraph (d)(6)(iv) of this section to determine the E&P basis of the loss property.

(x) *Ruling for involuntary conversion.* If property that is a U.S. asset of a foreign corporation is compulsorily or involuntarily converted into property not similar or related in service or use (within the meaning of section 1033), the foreign corporation may apply to the Commissioner for a ruling to determine its U.S. assets for the taxable year of the involuntary conversion.

(xi) *Examples.* The principles of paragraphs (c) and (d) (1) and (2) of this section are illustrated by the following examples.

Example 1. Depreciable property. Foreign corporation A, a calendar year taxpayer, is engaged in a trade or business in the United States. A owns equipment that is used in its manufacturing business in country X and in the United States. Under § 1.861–8, A's depreciation deduction with respect to the equipment is allocated to sales income and is apportioned 70 percent to ECI and 30 percent to income that is not ECI. Under paragraph (d)(2)(ii) of this section, the equipment is 70 percent a U.S. asset. The equipment has an E&P basis of $100 at the beginning of 1993. A's depreciation deduction (for purposes of computing earnings and profits) with respect to the equipment is $10 for 1993. To determine the amount of A's U.S. asset at the close of 1993, the equipment's $90 E&P basis at the close of 1993 is multiplied by 70 percent (the proportion of the asset that is a U.S. asset). The amount of the U.S. asset as of the close of 1993 is $63.

Example 2. U.S. real property interest not connected to a U.S. business. Foreign corporation A owns a condominium apartment in the United States. Assume that holding the apartment does not constitute a U.S. trade or business and the foreign corporation has not made an election under section 882(d) to treat income with respect to the property as ECI. The condominium apartment is not a U.S. asset of A because the income, if any, from the asset would not be ECI. However, the disposition by A of the condominium apartment at a gain will give rise to ECEP.

Example 3. Stock in a domestically-controlled REIT. As an investment, foreign corporation A owns stock in a domestically-controlled REIT, within the meaning of section 897(h)(4)(B). Under section 897(h)(2), gain on disposition of stock in the REIT is not treated as ECI. For this reason the stock does not qualify as a U.S. asset under paragraph (d)(1) of this section even if dividend distributions from the REIT are treated as ECI. Thus, A will have a dividend equivalent amount based on the ECEP attributable to a distribution of ECI from the REIT, even if A invests the proceeds from the dividend in additional stock of the REIT. (Stock in a REIT that is not a domestically-controlled REIT is also not a U.S. asset. See § 1.884–1(d)(5)).

Example 4. Section 864(c)(7) property. Foreign corporation A is engaged in the equipment leasing business in the United States and Canada. A transfers the equipment leased by its U.S. trade or business to its Canadian business after the equipment is fully depreciated in the United States. The Canadian business sells the equipment two years later. Section 864(c)(7) would treat the gain on the disposition of the equipment by A as taxable under section 882 as if the sale occurred immediately before the equipment was transferred to the Canadian business. The equipment would not be treated as a U.S. asset even if the gain was ECI because the income from the equipment in the year of the sale in Canada would not be ECI.

(3) *Interest in a partnership*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a foreign corporation's interest in a partnership shall be treated as a U.S. asset in the same proportion as its distributive share of partnership gross income for the partnership's taxable year that ends with or within its taxable year that is ECI bears to its distributive share of all partnership gross income for that taxable year.

(ii) *Partnership operated to increase a foreign corporation's U.S. assets artificially.* If the District Director determines that one of the principal purposes of the acquisition of a partnership interest or the acquisition or ownership of certain properties by a partnership is to increase the U.S. assets of a foreign corporation artificially, the District Director may compute the portion of the foreign corporation's interest in the partnership that is a U.S. asset using a method that more accurately reflects the foreign corporation's interest in the partnership property that would be U.S. assets if held directly by the foreign corporation. Whether a partnership interest is acquired, or partnership property is acquired or owned, for such purpose will depend on all the facts and circumstances of each case. Factors to be considered include whether the partnership conducts unrelated businesses or whether the partnership accumulates investment property unrelated to its trade or business or

liquid assets in excess of the reasonable needs of its business. For purposes of this paragraph (d)(3)(ii), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(iii) *Example.* The application of paragraph (d)(3)(ii) of this section is illustrated by the following example.

Example. Foreign corporation A is a partner in partnership X and is entitled to 50 percent of the income of X and 50 percent of the value of all property of X upon X's liquidation. X is engaged in an active U.S. real estate business which, during the taxable year, produces $100 of gross income that is ECI. In the same taxable year, X acquires securities (from funds that are either generated by its business, borrowed or contributed) that produce $50 of gross income that is not ECI. The securities are unrelated to the real estate business and substantially exceed the reasonable needs of the business. The real estate securities each have an adjusted basis of $1000. Under paragraph (d)(3)(i) of this section, two-thirds (50/75) of A's distributive share of partnership gross income is ECI, and two-thirds of A's basis in its partnership interest is therefore treated as a U.S. asset. However, because the securities acquired by X are unrelated to X's real estate business and exceed the reasonable needs of the business, the District Director may determine that a principle purpose of X's acquisition of the securities is to increase artificially the U.S. assets of A. The District Director may, therefore, compute the portion of A's interest in X that is treated as a U.S. asset by, for example, using the ratio of A's pro rata share of the adjusted basis of the property of X that produces income that is ECI ($500) to A's pro rata share of all property of X ($1000). As a result, 50 percent of A's partnership interest would be treated as a U.S. asset rather than 75 percent.

(iv) *Special rule for determining a partner's adjusted basis in a partnership interest.* For purposes of this paragraph (d)(3) and paragraph (d)(6) of this section, a partner's adjusted basis in a partnership interest shall be the partner's basis in such interest (as determined under section 705)—

(A) Reduced by the partner's share of the liabilities of the partnership (as determined under section 752); and

(B) Increased by a proportionate share of each liability of the partnership equal to the partner's proportionate share, for income tax purposes, of the interest expense attributable to such liability for the taxable year.

(v) *E&P basis of a partnership interest.* See paragraph (d)(6)(iii) of this section for special rules governing the calculation of a foreign corporation's E&P basis in a partnership interest.

(4) *Interest in a trust or estate.* [Reserved]

(5) *Property that is not a U.S. asset*—(i) *Property that does not give rise to ECEP.* Property described in paragraphs (d) (1) through (4) of this section shall not be treated as a U.S. asset of a foreign corporation if, on the determination date, income from the use of the property, or gain or loss from the disposition of the property, would be described in paragraph (f)(2) of this section (relating to certain income that does not produce ECEP).

(ii) *Assets acquired to increase U.S. net equity artificially.* U.S. assets shall not include assets acquired or used by a foreign corporation if one of the principal purposes of such acquisition or use is to increase artificially the U.S. assets of a foreign corporation on the determination date. Whether assets are acquired or used for such purpose will depend upon all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes in acquiring or using an asset is to increase artificially the U.S. assets of a foreign corporation include the length of time during which the asset was used in a U.S. trade or business, whether the asset was acquired from, or disposed of to, a related person, and whether the aggregate value of the U.S. assets of the foreign corporation increased temporarily on the determination date. For purposes of this paragraph (d)(5)(ii), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(iii) *Interbranch transactions disregarded.* All assets that arise from interbranch transactions will be disregarded.

(6) *E&P basis of a U.S. asset*—(i) *General rule.* The E&P basis of a U.S. asset for purposes of this section is its adjusted basis for purposes of computing the foreign corporation's earnings and profits. In determining the E&P basis of a U.S. asset, the adjusted basis of the asset (for purposes of computing taxable income) must be increased or decreased to take into account inclusions of income or gain, and deductions or similar charges, that affect the basis of the asset where such items are taken into account in a different manner for purposes of computing earnings and profits than for purposes of computing taxable income. For example, if section 312 (k) requires that depreciation with respect to a U.S. asset be determined using the straight line method for purposes of computing earnings and profits, but depreciation with respect to the asset is determined using a different method for purposes of computing taxable income, the E&P basis of the property for purposes of this section must be computed using the straight line method of depreciation.

(ii) *Installment obligations*—(A) *Sales in taxable year beginning on or after January 1, 1987.* For purposes of this section, the E&P basis of an installment obligation described in paragraph (d)(2)(iii) of this section that arises in connection with an installment sale occurring in a taxable year beginning on or after January 1, 1987, shall equal the sum of the total amount of gain from the sale if the obligation were satisfied in full and the adjusted basis of the property sold as of the date of sale, reduced by payments received with respect to the obligation that are not interest or original issue discount. See paragraph (j)(2)(ii) of this section, however, for a special E&P basis rule for an installment obligation arising in connection with a sale of a U.S. asset by a foreign corporation described in section 312(k)(4), where such sale occurs in a taxable year beginning in 1987.

(B) *Sales in taxable year prior to January 1, 1987.* For purposes of this section, the E&P basis of an installment obligation described in paragraph (d)(2)(iii) of this section that arises in connection with an installment sale occurring in a taxable year beginning before January 1, 1987, shall equal zero.

(iii) *Computation of E&P basis in a partnership.* For purposes of this section, a foreign corporation's E&P basis in a partnership interest shall be the foreign corporation's adjusted basis in such interest (as determined under paragraph (d)(3)(iv) of this section), further adjusted to take into account any differences between the foreign corporation's distributive share of items of partnership income, gain, loss, and deduction for purposes of computing the taxable income of the foreign corporation and the foreign corporation's distributive share of items of partnership income, gain, loss, and deductions for purposes of computing the earnings and profits of the foreign corporation.

(iv) *Computation of E&P basis of a loss property.* The E&P basis of a loss property (as defined in paragraph (d)(2)(ix) of this section) shall equal the E&P basis, immediately before the loss, of the U.S. asset with respect to which the loss was substained, reduced (but not below zero) by—

(A) The amount of any deduction claimed under section 165 by the foreign corporation with respect to the loss for earnings and profits purposes; and

(B) Any compensation received with respect to the loss.

(v) *Example.* The application of paragraph (d)(6)(ii) of this section is illustrated by the following example.

Example. Sale in taxable year beginning on or after January 1, 1987. Foreign corporation A, a calendar year taxpayer, sells a U.S. asset on the installment method in 1993. Under the terms of the sale, A is to receive $100, payable in ten annual installments of $10 beginning in 1994, plus an arm's-length rate of interest on the unpaid balance of the sales price. A's adjusted basis in the property sold is $70. The obligation received in connection with the installment sale is treated as a U.S. asset with an E&P basis of $100 ($30 (the amount of gain from the sale if the obligation were satisfied in full) + $70 (the adjusted basis of the property sold)). If A receives a payment of $10 (not including interest) in 1994 with respect to the obligation, the obligation is treated as a U.S. asset with an E&P basis of $90 ($100−$10) as of the close of 1994.

(e) *U.S. liabilities.* The term "U.S. liabilities" means the amount of liabilities determined under paragraph (e)(1) of this section decreased by the amount of liabilities determined under paragraph (e)(3) of this section, and increased by the amount of liabilities determined under paragraph (e)(2) of this section.

(1) *Liabilities based on § 1.882–5.* The amount of liabilities determined under this paragraph (e)(1) is the amount of U.S.-connected liabilities of a foreign corporation under § 1.882–5 if the U.S.-connected liabilities were computed using the assets and liabilities of the foreign corporation as of the determination date (rather than the average of such assets and liabilities for the taxable year) and without regard to paragraph (e)(3) of this section.

(2) *Insurance reserves.* The amount of liabilities determined under this paragraph (e)(2) is the amount (as of the determination date) of the total insurance liabilities on United States business (within the meaning of section 842(b)(2)(B)) of a foreign corporation described in section 842(a) (relating to foreign corporations carrying on an insurance business in the United States) to the extent that such liabilities are not otherwise treated as U.S. liabilities by reason of paragraph (e)(1) of this section.

(3) *Election to reduce liabilities*—(i) *General rule.* The amount of liabilities determined under this paragraph (e)(3) is the amount by which a foreign corporation elects to reduce its liabilities under paragraph (e)(1) of this section.

(ii) *Limitation.* For any taxable year, a foreign corporation may elect to reduce the amount of its liabilities determined under paragraph (e)(1) of this section by an amount that does not exceed the excess, if any, of the amount of liabilities in paragraph (e)(1) of this section over the amount of liabilities shown on the books of the U.S. trade or business (determined under either § 1.882–5(b)(3) (i) or (ii)) as of the determination date.

(iii) *Effect of election on interest deduction and branch-level interest tax.* A foreign corporation that elects to reduce its liabilities under this paragraph (e)(3) must, for purposes of computing the amount of its interest apportioned to ECI under § 1.882–5, reduce its U.S.-connected liabilities for the taxable year of the election by the amount of the reduction in liabilities under this paragraph (e)(3). The reduction of its U.S.-connected liabilities will also require a corresponding decrease in the amount of its interest apportioned to ECI under § 1.882–5 for purposes of § 1.884–4(a) and for all other Code sections for which the amount of interest apportioned under § 1.882–5 is relevant.

(iv) *Method of election.* A foreign corporation that elects the benefits of this paragraph (e)(3) for a taxable year shall state on its return for the taxable year (or on a statement attached to the return) that it has elected to reduce its liabilities for the taxable year under this paragraph (e)(3) and that it has reduced the amount of its U.S.-connected liabilities as provided in paragraph (e)(3)(iii) of this section, and shall indicate the amount of such reductions on the return or attachment. An election under this paragraph (e)(3) must be made before the due date (including extensions) for the foreign corporation's income tax return for the taxable year.

(v) *Effect of election on complete termination.* If a foreign corporation completely terminates its U.S. trade or business (within the meaning of § 1.884–2T (a)(2)), notwithstanding § 1.884–2T(a), the foreign corporation will be subject to tax on a dividend equivalent amount that equals the lesser of—

(A) The foreign corporation's accumulated ECEP that is attributable to an election to reduce liabilities; or

(B) The amount by which the corporation elected to reduce liabilities at the end of the taxable year preceding the year of complete termination.

For purposes of the preceding sentence, accumulated ECEP is attributable to an election to reduce liabilities to the extent that the ECEP was accumulated because of such an election rather than because of an increase in U.S. assets. For example, if a foreign corporation did not have positive ECEP in any year for which an election was made, it would not be required to include an amount as a dividend equivalent amount under this paragraph (e)(3)(v) because any accumulated ECEP that it may have is not attributable to an election to reduce liabilities.

(4) *Artificial decrease in U.S. liabilities.* If a foreign corporation repays or otherwise decreases its U.S. liabilities and one of the principal purposes of such decrease is to decrease artificially its U.S. liabilities on the determination date, then such decrease shall not be taken into account for purposes of computing the foreign corporation's U.S. net equity. Whether the U.S. liabilities of a foreign corporation are artificially decreased will depend on all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes for the repayment or decrease of the liabilities is to decrease artificially the U.S. liabilities of a foreign corporation shall include whether the aggregate liabilities are temporarily decreased on or before the determination date by, for example, the repayment of liabilities, or U.S. liabilities are temporarily decreased on or before the determination date by the acquisition with contributed funds of passive-type assets that are not U.S. assets. For purposes of this paragraph (e)(4), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(5) *Examples.* The application of this paragraph (e) is illustrated by the following examples.

Example 1. General rule for computation of U.S. liabilities. As of the close of 1993, foreign corporation A, a calendar year taxpayer computes its U.S.-connected liabilities under § 1.882–5(b) using its actual ratio of liabilities to assets. For purposes of computing its U.S.-connected liabilities under § 1.882–5(b), A must determine, the average total value of its assets that generate, have generated, or could reasonably have been or be expected to generate ECI. Assume that the average value of such assets is $100, while the amount of such assets as of the close of 1993 is $125. For purposes of § 1.882–5(b)(2), A must determine the ratio of the average of its worldwide liabilities for the year to the average total value of worldwide assets for the taxable year. Assume that A's average liabilities-to-assets ratio under § 1.882–5(b)(2) is 55 percent, while its liabilities-to-assets ratio at the close of 1993 is only 50 percent. Thus, assuming no further adjustments under paragraph (e)(3) of this section, A's U.S.-connected liabilities for purposes of § 1.882–5 are $55 ($100×55%). However, A's U.S. liabilities are $62.50 for purposes of this section, the amount of its assets determined under § 1.882–5(b)(1) as of the close of December ($125) multiplied by the liabilities-to-assets ratio of (50%) as of such date.

Example 2. Election made to reduce liabilities. (i) As of the close of 1993, foreign

corporation A, a real estate company, owns U.S. assets with an E&P basis of $1000. A has $800 of liabilities under paragraph (e)(1) of this section and $300 of liabilities shown on the books and records of its U.S. trade or business under § 1.882–5(b)(3). A has accumulated ECEP of $500 and in 1994, A has $60 of ECEP that it intends to retain for future expansion of its U.S. trade or business. A elects under paragraph (e)(3) of this section to reduce its liabilities by $60 from $800 to $740. As a result of the election, assuming A's U.S. assets and U.S. liabilities would otherwise have remained constant, A's U.S. net equity as of the close of 1994 will increase by the amount of the decrease in liabilities ($60) from $200 to $260 and its ECEP will be reduced to zero. Under paragraph (e)(3)(iii) of this section, A's interest expense for the taxable year is reduced by the amount of interest attributable to $60 of liabilities and A's excess interest is reduced by the same amount. A's taxable income and ECEP are increased by the amount of the reduction in interest expense attributable to the liabilities, and A may make an election under paragraph (e)(3) of this section to further reduce its liabilities, thus increasing its U.S. net equity and reducing the amount of additional ECEP created for the election.

(ii) In 1995, assuming A again has $60 of ECEP, A may again make the election under paragraph (e)(3) to reduce its liabilities. However, assuming A's U.S. assets and liabilities under paragraph (e)(1) of this section remain constant, A will need to make an election to reduce its liabilities by $120 to reduce to zero its ECEP in 1995 and to continue to retain for expansion (without the payment of the branch profits tax) the $60 of ECEP earned in 1994. Without an election to reduce liabilities, A's dividend equivalent amount for 1995 would be $120 ($60 of ECEP plus the $60 reduction in U.S. net equity from $260 to $200). If A makes the election to reduce liabilities by $120 (from $800 to $680), A's U.S. net equity will increase by $60 (from $260 at the end of the previous year to $320), the amount necessary to reduce its ECEP to $0. However, the reduction of liabilities will itself create additional ECEP subject to section 884 because of the reduction in interest expense attributable to the $120 of liabilities. A can make the election to reduce liabilities by $120 without exceeding the limitation on the election provided in paragraph (e)(3)(ii) of this section because $120 does not exceed the excess of $800 (the amount of A's liabilities under paragraph (e)(1) of this section) over $300 (the amount of liabilities on A's books.

(iii) If A terminates its U.S. trade or business in 1995 in accordance with the rules in § 1.884–2T(a), A would not be subject to the branch profits tax on the $60 of ECEP earned in that year. Under paragraph (e)(3)(v) of this section, however, it would be subject to the branch profits tax on the portion of the $60 of ECEP that it earned in 1994 that became accumulated ECEP because of an election to reduce liabilities.

(f) *Effectively connected earnings and profits*—(1) *In general.* Except as provided in paragraph (f)(2) of this section and as modified by § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business or the reorganization or liquidation of a foreign corporation or its domestic subsidiary), the term "effectively connected earnings and profits" ("ECEP") means the earnings and profits (or deficits therein) determined under section 312 and this paragraph (f) that are attributable to ECI (within the meaning of paragraph (d)(1)(iii) of this section). Because the term "ECI" includes income treated as effectively connected, income that is ECI under section 842(b) (relating to minimum net investment income of an insurance business) or 864(c)(7) (relating to gain from property formerly held for use in a U.S. trade or business) gives rise to ECEP. ECEP also includes earnings and profits attributable to ECI of a foreign corporation earned through a partnership, and through a trust or estate. For purposes of section 884, gain on the sale of a U.S. real property interest by a foreign corporation that has made an election to be treated as a domestic corporation under section 897(i) will also give rise to ECEP. ECEP is not reduced by distributions made by the foreign corporation during any taxable year or by the amount of branch profits tax or tax on excess interest (as defined in § 1.884–4(a)(2)) paid by the foreign corporation. Earnings and profits are treated as attributable to ECI even if the earnings and profits are taken into account under section 312 in an earlier or later taxable year than the taxable year in which the ECI is taken into account.

(2) *Income that does not produce ECEP.* The term "ECEP" does not include any earnings and profits attributable to—

(i) Income excluded from gross income under section 883(a)(1) or 883(a)(2) (relating to certain income derived from the operation of ships or aircraft);

(ii) Income that is ECI by reason of section 921(d) or 926(b) (relating to certain income of a FSC and certain dividends paid by a FSC to a foreign corporation or nonresident alien) that is not otherwise ECI;

(iii) Gain on the disposition of a U.S. real property interest described in section 897(c)(1)(A)(ii) (relating to certain interests in a domestic corporation);

(iv) Income that is ECI by reason of section 953(3)(c)(C) (relating to certain income of a captive insurance company that a corporation elects to treat as ECI) that is not otherwise ECI;

(v) Income that is exempt from tax under section 892 (relating to certain income of foreign governments); and

(vi) Income that is ECI by reason of section 882(e) (relating to certain interest income of banks organized under the laws of a possession of the United States) that is not otherwise ECI.

(3) *Allocation of deductions attributable to income that does not produce ECEP.* In determining the amount of a foreign corporation's ECEP for the taxable year, deductions and other adjustments shall be allocated and apportioned under the principles of § 1.861–8 between ECI that gives rise to ECEP and income described in paragraph (f)(2) of this section (relating to income that is ECI but does not give rise to ECEP).

(4) *Examples.* The principles of paragraph (f) of this section are illustrated by the following examples.

Example 1. Tax-exempt income. Foreign corporation A owns a tax-exempt municipal bond that is a U.S. asset as of the close of its 1989 taxable year. The municipal bond gives rise in 1989 to ECI (even though the income is excluded from gross income under section 103(a) and is not gross income of a foreign corporation by reason of section 882(b)), and therefore gives rise to ECEP in 1989.

Example 2. Income exempt under a treaty. Foreign corporation A derives ECI that constitutes business profits that are not attributable to a permanent establishment maintained by A in the United States. The ECI is exempt from taxation under section 882(a) by reason of an income tax treaty and section 894(a). The income nevertheless gives rise to ECEP under this paragraph (f). However, a dividend equivalent amount attributable to such ECEP may be exempt from the branch profits tax by reason of paragraph (g) of this section (relating to the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty).

(g) *Corporations resident in countries with which the United States has an income tax treaty*—(1) *General rule.* Except as provided in paragraph (g)(2) of this section, a foreign corporation that is a resident of a country with which the United States has an income tax treaty in effect for a taxable year in which it has a dividend equivalent amount and that meets the requirements, if any, of the limitation on benefits provisions of such treaty with respect to the dividend equivalent amount shall not be subject to the branch profits tax on such amount (or will qualify for a reduction in the amount of tax with respect to such amount) only if—

(i) The foreign corporation is a qualified resident of such country for the taxable year, within the meaning of § 1.884–5(a); or

(ii) The limitation on benefits provision, or an amendment to that

provision, entered into force after December 31, 1986.

If, after application of § 1.884–5(e)(4)(iv), a foreign corporation is a qualified resident under § 1.884–5(e) (relating to the active trade or business test) only with respect to one of its trades or businesses in the United States, i.e., the trade or business that is an integral part of its business conducted in its country of residence, and not with respect to another, the rules of this paragraph shall apply only to that portion of its dividend equivalent amount attributable to the trade or business for which the foreign corporation is a qualified resident.

(2) *Special rules for foreign corporations that are qualified residents on the basis of their ownership*—(i) *General rule.* A foreign corporation that, in any taxable year, is a qualified resident of a country with which the United States has an income tax treaty in effect solely by reason of meeting the requirements of § 1.884–5 (b) and (c) (relating, respectively, to stock ownership and base erosion) shall be exempt from the branch profits tax or subject to a reduced rate of branch profits tax under paragraph (g)(1) of this section with respect to the portion of its dividend equivalent amount for the taxable year attributable to accumulated ECEP only if the foreign corporation is a qualified resident of such country within the meaning of § 1.884–5(a) for the taxable years includable, in whole or in part, in a consecutive 36-month period that includes the taxable year of the dividend equivalent amount. A foreign corporation that fails the 36-month test described in the preceding sentence shall be exempt from the branch profits tax or subject to the branch profits tax at a reduced rate under paragraph (g)(1) of this section with respect to accumulated ECEP (determiend on a last-in-first-out basis) accumulated only during prior years in which the foreign corporation was a qualified resident of such country within the meaning of § 1.884–5(a).

(ii) *Rules of application.* A foreign corporation that has not satisfied the 36-month test as of the close of the taxable year of the dividend equivalent amount but satisfies the test with respect to such dividend equivalent amount by meeting the 36-month test by the close of the second taxable year succeeding the taxable year of the dividend equivalent amount shall be subject to the branch profits tax for the year of the dividend equivalent amount without regard to paragraph (g)(1) of this section on the portion of the dividend equivalent amount attributable to accumulated ECEP derived in a taxable year in which the foreign corporation was not a qualified resident within the meaning of § 1.884–5(a). Upon meeting the 36-month test, the foreign corporation shall be entitled to claim by amended return a refund of the tax paid with respect to the dividend equivalent amount in excess of the branch profits tax calculated by taking into account paragraph (g)(2)(i) of this section, provided the foreign corporation establishes in the amended return for the taxable year that it has met the requirements of such paragraph. For purposes of section 6611 (dealing with interest on overpayments), any overpayment of branch profits tax by reason of this paragraph (g)(2)(ii) shall be deemed not to have been made before the filing date for the taxable year in which the foreign corporation establishes that it has met the 36-month test.

(iii) *Example.* The application of this paragraph (g)(2) is illustrated by the following example.

Example. (i) Foreign corporation A, a calendar year taxpayer, is a resident of the United Kingdom. A has a dividend equivalent amount for its taxable year 1991 of $300, of which $100 is attributable to 1991 ECEP and $200 to accumulated ECEP. A is a qualified resident for its taxable year 1991 because for that year it meets the requirements of § 1.884–5 (b) and (c), relating, respectively, to stock ownership and base erosion. For 1991 A does not meet the requirements of § 1.884–5 (d), (e), or (f) for qualified residence. A is not a qualified resident of the United Kingdom for any taxable year prior to 1990 but is a qualified resident for its taxable years 1990 and 1992.

(ii) Because A is a qualified resident for the 3-year period (1990, 1991, and 1992) that includes the taxable year of the dividend equivalent amount (1991), A satisfies the 36-month test of this paragraph (g)(2) and no branch profits tax is imposed on the total $300 dividend equivalent amount. However, since A was not a qualified resident for any taxable year prior to 1990 and therefore cannot establish that it has satisfied the 36-month test until the taxable year following the year of the dividend equivalent amount, A must pay the branch profits tax for its taxable year 1991 with respect to the portion of the dividend equivalent amount attributable to accumulated ECEP relating to years prior to 1990 without regard to paragraph (g)(1) of this section. A may file for a refund of the branch profits tax paid with respect to its 1991 taxable year at any time after it establishes that it is a qualified resident for its 1992 taxable year.

(3) *Exemptions for foreign corporations resident in certain countries with income tax treaties in effect on January 1, 1987.* The branch profits tax shall not be imposed on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraphs (g) (1) and (2) of this section for a country listed below, so long as the income tax treaty between the United States and that country, as in effect on January 1, 1987, remains in effect, except to the extent the treaty is modified on or after January 1, 1987, to expressly provide for the imposition of the branch profits tax:

Aruba	Jamaica
Austria	Japan
Belgium	Korea
People's Republic of China	Luxembourg
	Malta
Cyprus	Morocco
Denmark	Netherlands
Egypt	Netherlands Antilles
Finland	Norway
Germany	Pakistan
Greece	Philippines
Hungary	Sweden
Iceland	Switzerland
Ireland	United Kingdom
Italy	

(4) *Modifications with respect to other income tax treaties*—(i) *Limitation on rate of tax*—(A) *General rule.* If, under paragraphs (g) (1) and (2) of this section, a corporation qualifies for a reduction in the amount of the branch profits tax and paragraph (g)(3) of this section does not apply, the rate of tax shall be the rate of tax on branch profits specified in the treaty between the United States and the corporation's country of residence or, if no rate of tax on branch profits is specified, the rate of tax that would apply under such treaty to dividends paid to the foreign corporation by a wholly-owned domestic corporation.

(B) *Certain treaties in effect on January 1, 1987.* The branch profits tax shall generally be imposed at the following rates on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraphs (g) (1) and (2) of this section for a country listed below, for as long as the relevant provisions of those income tax treaties remain in effect and are not modified or superseded by subsequent agreement:

Australia (15%)	Poland (5%)
Barbados (5%)	Romania (10%)
Canada (10%)	South Africa (30%)
France (5%)	Trinidad & Tobago (10%)
New Zealand (5%)	U.S.S.R. (30%)

However, for special rates imposed on corporations resident in France and Trinidad & Tobago that have certain amounts of dividend and interest income, see the dividend articles of the income tax treaties with those countries.

(ii) *Limitations other than rate of tax.* If, under paragraphs (g) (1) and (2) of this section, a foreign corporation qualifies for a reduction in the amount of branch profits tax and paragraph (g) (3) of this section does not apply, then—

(A) The foreign corporation shall be entitled to the benefit of any limitations on imposition of a tax on branch profits (in addition to any limitations on the rate of tax) contained in the treaty; and

(B) No branch profits tax shall be imposed with respect to a dividend equivalent amount out of ECEP or accumulated ECEP of the foreign corporation unless the ECEP or accumulated ECEP is attributable to a permanent establishment in the United States or, if not otherwise prohibited under the treaty, to gain from the disposition of a U.S. real property interest described in section 897(c)(1)(A)(i), except to the extent the treaty specifically permits the imposition of the branch profits tax on such earnings and profits.

No article in such treaty shall be construed to provide any limitations on imposition of the branch profits tax other than as provided in this paragraph (g)(4).

(iii) *Computation of the dividend equivalent amount if a foreign corporation has both ECEP attributable to a permanent establishment and not attributable to a permanent establishment.* To determine the dividend equivalent amount of a foreign corporation out of ECEP that is attributable to a permanent establishment, the foreign corporation may only take into account its U.S. assets, U.S. liabilities, U.S. net equity and ECEP attributable to its permanent establishment. Thus, a foreign corporation may not reduce the amount of its ECEP attributable to its permanent establishment by reinvesting all or a portion of that amount in U.S. assets not attributable to the permanent establishment.

(iv) *Limitations under the Canadian treaty.* The limitations on the imposition of the branch profits tax under the Canadian treaty include, but are not limited to, those described in paragraphs (g)(4)(iv) (A) and (B).

(A) *Effect of deficits in earnings and profits.* In the case of a foreign corporation that is a qualified resident of Canada, the dividend equivalent amount for any taxable year shall not exceed the foreign corporation's accumulated ECEP as of the beginning of the taxable year plus the corporation's ECEP for the taxable year. Thus, for example, if a foreign corporation that is a qualified resident of Canada has a deficit in accumulated ECEP of $200 as of the beginning of the taxable year and ECEP of $100 for the taxable year, it will have no dividend equivalent amount for the taxable year because it would have a cumulative deficit in ECEP of $100 as of the close of the taxable year. For purposes of this paragraph (g)(4)(iii)(A), any net deficit in accumulated earnings and profits attributable to taxable years beginning before January 1, 1987, shall be includible in determining accumulated ECEP.

(B) *One-time exemption of Canadian $500,000—(1) General rule.* In the case of a foreign corporation that is a qualified resident of Canada, the branch profits tax shall be imposed only with respect to that portion of the dividend equivalent amount for the taxable year that, when translated into Canadian dollars and added to the dividend equivalent amounts for preceding taxable years translated into Canadian dollars, exceeds Canadian $500,000. The value of the dividend equivalent amount in Canadian currency shall be determined by translating the ECEP for each taxable year that is includible in the dividend equivalent amount (as determined in U.S. dollars under the currency translation method used in determining the foreign corporation's taxable income for U.S. tax purposes) by the weighted average exchange rate for the taxable year (determined under the rules of section 989(b)(3)) during which the earnings and profits were derived.

(*2*) *Reduction in amount of exemption in the case of related corporations.* The amount of a foreign corporation's exemption under this paragraph (g)(4)(iii)(B) shall be reduced by the amount of any exemption that reduced the dividend equivalent amount of an associated foreign corporation with respect to the same or a similar business. For purposes of this paragraph (g)(4)(iii)(B), a foreign corporation is an associated foreign corporation if it is related to the foreign corporation for purposes of sectional 267(b) or it and the foreign corporation are stapled entities (within the meaning of section 269B(c)(2)) or are effectively stapled entities. A business is the same as or similar to another business if it involves the sale, lease, or manufacture of the same or a similar type of property or the provision of the same or a similar type of services. A U.S. real property interest described in section 897(c)(1)(A)(i) shall be treated as a business and all such U.S. real property interests shall be treated as businesses that are the same or similar.

(*3*) *Coordination with second-tier withholding tax.* The value of the dividend equivalent amount that is exempt from the branch profits tax by reason of paragraph (g)(4)(iii)(B)(*1*) of this section shall not be subject to tax under section 871(a) or 881, or to withholding under section 1441 or 1442, when distributed by the foreign corporation.

(5) *Benefits under treaties other than income tax treaties.* A treaty that is not an income tax treaty does not exempt a foreign corporation from the branch profits tax or reduce the amount of the tax.

(h) *Stapled entities.* Any foreign corporation that is treated as a domestic corporation by reason of section 269B (relating to stapled entities) shall continue to be treated as a foreign corporation for purposes of section 884 and the regulations thereunder, notwithstanding section 269B or the regulations thereunder. Dividends paid by such foreign corporation shall be treated as paid by a domestic corporation and shall be subject to the tax imposed by section 871(a) or 881(a), and to withholding under section 1441 or 1442, as applicable, to the extent paid out of earnings and profits that are not subject to tax under section 884(a). Dividends paid by such foreign corporation out of earnings and profits subject to tax under section 884(a) shall be exempt from the tax imposed by sections 871(a) and 881(a) and shall not be subject to withholding under section 1441 or 1442. Whether dividends are paid out of earnings and profits that are subject to tax under section 884(a) shall be determined under section 884(e)(3)(A) and the regulations thereunder. The limitation on the application of treaty benefits in section 884(e)(3)(B) (relating to qualified residents) shall apply to a foreign corporation described in this paragraph (h).

(i) *Effective date—(1) General rule.* This section is effective for taxable years beginning on or after October 13, 1992. With respect to a taxable year beginning before October 13, 1992 and after December 31, 1986, a foreign corporation may elect to apply this section in lieu of § 1.884–1T of the temporary regulations (as contained in the CFR edition revised as of April 1, 1992), but only if the foreign corporation also makes an election under § 1.884–4 (e) to apply § 1.884.4 in lieu of § 1.884–4T (as contained in the CFR edition revised as of April 1, 1992) for that taxable year, and the statute of limitations for assessment of a deficiency has not expired for that taxable year. Once an election has been made, an election under this section shall apply to all subsequent taxable years. However, paragraph (f)(2)(vi) of this section (relating to certain interest income of Possessions banks) shall not apply for taxable years beginning before January 1, 1990.

(2) *Election to reduce liabilities.* A foreign corporation may make an election to reduce its liabilities under paragraph (e)(3) of this section with respect to a taxable year for which an election under paragraph (i)(1) of this section is in effect by filing an amended return for the taxable year and recomputing its interest deduction and any other item affected by the election on an amended Form 1120F to take into account the reduction in liabilities for such year.

(3) *Separate election for installment obligations.* A foreign corporation may make a separate election to apply paragraphs (d)(2)(iii) and (d)(6)(ii) of this section (relating to installment obligations treated as U.S. assets) to any prior taxable year without making an election under paragraph (i)(1) of this section, provided the statute of limitations for assessment of a deficiency has not expired for that taxable year and each succeeding taxable year. Once an election under this paragraph (i)(3) has been made, it shall apply to all subsequent taxable years.

(j) *Transition rules*—(1) *General rule.* Except as provided in paragraph (j)(2) of this section, in order to compute its dividend equivalent amount in the first taxable year to which this section applies (whether or not such year begins before October 13, 1992, a foreign corporation must recompute its U.S. net equity as of close of the preceding taxable year using the rules of this section and use such recomputed amount, rather than the amount computed under § 1.884–1T (as contained in the CFR edition revised as of April 1, 1992), to determine the amount of any increase or decrease in the U.S. net equity as of the close of that taxable year.

(2) *Installment obligations*—(i) *Interest election.* In recomputing its U.S. net equity as of the close of the preceding taxable year, a foreign corporation that holds an installment obligation treated as a U.S. asset under § 1.884–1T(d)(7) (as contained in the CFR edition revised as of April 1, 1992) as of such date may apply the rules of paragraph (d)(2)(iii) of this section without regard to the rule in that paragraph that requires interest or original issue discount on the obligation to be treated as ECI in order for such obligation to be treated as a U.S. asset.

(ii) *1987 sales by certain foreign corporations.* The E&P basis of an installment obligation arising in connection with a sale of property by a foreign corporation described in section 312(k)(4), where such sale occurs in a taxable year beginning in 1987, shall equal the E&P basis of the property sold as of the determination date reduced by payments received with respect to the obligation that do not represent gain for earnings and profits purposes, interest or original issue discount.

Par. 4. Section 1.884–2T is amended as follows:

1. In paragraph (a)(2)(i), the first sentence of the concluding text, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

2. Paragraph (a)(2)(ii) is amended by adding three new sentences following the last sentence in that paragraph, which read as set forth below.

3. Paragraph (b) is revised to read as set forth below.

4. In paragraph (c)(2) introductory text, the reference to "§ 1.884—1T" is removed and the language "§ 1.884–1" is added in its place.

5. Paragraph (c)(2)(iii) is amended by adding three new sentences following the last sentence in that paragraph, which read as set forth below.

6. In paragraph (c)(3), the reference to "§ 1.884–1T (b)(3)(ii)" is removed and the language "§ 1.884–1(b)(3)(ii)" is added in its place.

7. In paragraph (c)(4)(iii), the reference to "§ 1.884–1T(h)(1) and (2)(i)" is removed and the language "§ 1.884–1(g)(1) and (2)(i)" is added in its place.

8. In paragraph (c)(5), the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

9. In paragraph (c)(6), the concluding text, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

10. In paragraph (d)(3) introduction text, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

11. In paragraph (d)(3)(ii) the reference to "§ 1,884–1T(b)(3)(ii)" is removed and the language "§ 1.884–1(b)(3)(ii)" is added in its place.

12. In paragraph (d)(6), paragraph (iv) of the *Example*, the reference to "§ 1.884–1T" is removed and the language "§ 1.884–1" is added in its place.

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

(a) * * *

(2) * * *

(ii) * * *. Until such time as forms are published, a foreign corporation may file Form 872 to extend the period for assessment of the branch profits tax for the year of complete termination. With respect to a complete termination occurring in a taxable year ending prior to September 11, 1992, a foreign corporation may also satisfy the requirements of this paragraph (a)(2)(ii) by attaching a statement to its income tax return that the foreign corporation agrees to extend the period for assessment of the branch profits tax for the year of complete termination in accordance with the terms of this paragraph (a)(2)(ii). A properly executed Form 872 or a statement authorized under the preceding sentence shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d).

(b) Election to remain engaged in a U.S. trade or business—(1) *General rule.* A foreign corporation that would be considered to have completely terminated all of its U.S. trade or business for the taxable year under the provisions of paragraph (a)(2)(i) of this section, but for the provisions of paragraph (a)(2)(i)(B) of this section that prohibit reinvestment within a three-year period, may make an election under this paragraph (b) for the taxable year in which it completely terminates all its U.S. trade or business (as determined without regard to paragraph (a)(2)(i)(B) of this section) and, if it so chooses, for the following taxable year (but not for any succeeding taxable year). The election under this paragraph (b) is an election by the foreign corporation to designate an amount of marketable securities as U.S. assets for purposes of § 1.884–1. The marketable securities identified pursuant to the election under paragraph (b)(3) of this section shall be treated as being U.S. assets in an amount equal, in the aggregate, to the lesser of the adjusted basis of the U.S. assets that ceased to be U.S. assets during the taxable year in which the election is made (determined on the date or dates the U.S. assets ceased to be U.S. assets) or the adjusted basis of the marketable securities as of the end of the taxable year. The securities must be held from the date that they are identified until the end of the taxable year for which the election is made, or if disposed of during the taxable year, must be replaced on the date of disposition with other marketable securities that are acquired on or before that date and that have a fair market value as of the date of substitution is not less than their adjusted basis.

(2) *Marketable security.* For purposes of this paragraph (b), the term "marketable security" means a security (including stock) that is part of an issue

any portion of which is regularly traded on an established securities market (within the meaning of § 1.884–5(d)(2) and (4)) and a deposit described in section 871(i)(3) (A) or (B).

(3) *Identification requirements.* In order to qualify for this Section—

(i) The marketable securities must be identified on the books and records of the U.S. trade or business within 30 days of the date an equivalent amount of U.S. assets ceases to be U.S. assets; and

(ii) On the date a marketable security is identified, its adjusted basis must not exceed its fair market value.

(4) *Treatment of income from deemed U.S. assets.* The income or gain from the marketable securities (or replacement securities) subject to an election under this paragraph (b) that arises in a taxable year for which an election is made shall be treated as ECI (other than for purposes of section 864(c)(7)), and losses from the disposition of such marketable securities shall be allocated entirely to income that is ECI. In addition, all such securities shall be treated as if they had been sold for their fair market value on the earlier of the last business day of a taxable year for which an election is in effect or the day immediately prior to the date of substitution by the foreign corporation of a U.S. asset for the marketable security, and any gain (but not loss) and accrued interest on the securities shall also be treated as ECI. The adjusted basis of such property shall be increased by the amount of any gain recognized by reason of this paragraph (b).

(5) *Method of election.* A foreign corporation may make an election under this paragraph (b) by attaching to its income tax return for the taxable year a statement—

(i) Identifying the marketable securities treated as U.S. assets under this paragraph (b);

(ii) Setting forth the E&P bases of such securities; and

(iii) Agreeing to treat any income, gain or loss as provided in paragraph (b)(4) of this section.

Such statement must be filed on or before the due date (including extensions) of the foreign corporation's income tax return for the taxable year. A foreign corporation shall not be permitted to make an election under this paragraph (b) more than once.

(6) *Effective date.* This paragraph (b) is effective for taxable years beginning on or after October 13, 1992. However, if a foreign corporation has made a valid election under § 1.884–1(i) to apply that section with respect to a taxable year beginning before October 13, 1992 and after December 31 1986, this paragraph (b) shall be effective beginning with such taxable year.

(c) * * *

(2) * * *

(iii) * * * Until such time as forms are published, a foreign corporation may file Form 872 to extend the period for assessment of any additional branch profits tax for the taxable year in which the section 381(a) transaction occurs. With respect to a section 381(a) transaction occurring in a taxable year ending prior to September 11, 1992, a foreign corporation may also satisfy the requirements of this paragraph (c)(2)(iii) by attaching a statement to its income tax return that the foreign corporation agrees to extend the period for assessment of the branch profits tax in accordance with the terms of this paragraph (c)(2)(iii). A properly executed Form 872 or a statement authorized under the preceding sentence shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d).

* * * * *

§§ 1.884–4 and 1.884–5 [Added]

Par. 5. Sections 1.884–4 and 1.884–5 are added to read as follows:

§ 1.884–4 Branch-level interest tax.

(a) *General rule*—(1) *Tax on branch interest.* In the case of a foreign corporation that, during the taxable year, is engaged in trade or business in the United States or has gross income that is ECI (as defined in § 1.884–1(d)(1)(iii)), any interest paid by such trade or business (hereinafter "branch interest," as defined in paragraph (b) of this section) shall, for purposes of subtitle A (Income Taxes), be treated as if it were paid by a domestic corporation (other than a corporation described in section 861(c)(1), relating to a domestic corporation that meets the 80 percent foreign business requirement). Thus, for example, whether such interest is treated as income from sources within the United States by the person who receives the interest shall be determined in the same manner as if such interest were paid by a domestic corporation (other than a corporation described in section 861(c)(1)). Such interest shall be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442, in the same manner as interest paid by a domestic corporation (other than a corporation described in section 861(c)(1)) if received by a foreign person and not effectively connected with the conduct by the foreign person of a trade or business in the United States, unless the interest, if paid by a domestic corporation, would be exempt under section 871(h) or 881(c) (relating to exemption for certain portfolio interest received by a foreign person), section 871(i) or 881(d) (relating, in part, to exemption for certain bank deposit interest received by a foreign person), or another provision of the Code. Such interest shall also be treated as interest paid by a domestic corporation (other than a corporation described in section 861(c)(1)) for purposes of sections 864(c), 871(b) and 882(a) (relating to income that is effectively connected with the conduct of a trade or business within the United States) and section 904 (relating to the limitation on the foreign tax credit). For purposes of this section, a foreign corporation also shall be treated as engaged in trade or business in the United States if, at any time during the taxable year, it owns an asset taken into account under § 1.882–5(b)(1) (referring to assets that generate, or may generate, effectively connected income) for purposes of determining the amount of the foreign corporation's interest expense apportioned to ECI and the interest apportioned by reference to the value of such asset provides in any taxable year a tax benefit for U.S. tax purposes. See paragraph (b)(8) of this section for the effect of income tax treaties on branch interest.

(2) *Tax on excess interest*—(i) Definition of excess interest. For purposes of this section, the term "excess interest" means—

(A) The amount of interest apportioned to ECI of the foreign corporation under § 1.882–5 for the taxable year, after application of § 1.884–1(e)(3); minus

(B) The foreign corporation's branch interest (as defined in paragraph (b) of this section) for the taxable year, but not including interest accruing in a taxable year beginning before January 1, 1987; minus

(C) The amount of interest determined under paragraph (c)(2) of this section (relating to interest paid by a partnership).

(ii) *Imposition of tax.* A foreign corporation shall be liable for tax on excess interest under section 881(a) in the same manner as if such excess interest were interest paid to the foreign corporation by a wholly-owned domestic corporation (other than a corporation described in section 861(c)(1)) on the last day of the foreign corporation's taxable year. Excess interest shall be exempt from tax under section 881(a) only as provided in

paragraph (a)(2)(iii) of this section (relating to treatment of certain excess interest of banks as interest on deposits) or paragraph (c)(3) of this section (relating to income tax treaties).

(iii) *Treatment of a portion of the excess interest of banks as interest on deposits.* A portion of the excess interest of a foreign corporation described in paragraph (b)(2) of this section (relating to foreign banks) shall be treated as interest on deposits (as described in section 871(i)(3)), and shall be exempt from the tax imposed by section 881(a) as provided in such section. The portion of the excess interest of the foreign corporation that is treated as interest on deposits shall equal the product of the foreign corporation's excess interest and the greater of—

(A) The ratio of the amount of interest-bearing deposits, within the meaning of section 871(i)(3)(A), of the foreign corporation as of the close of the taxable year to the amount of all interest-bearing liabilities of the foreign corporation on such date; or

(B) 85 percent.

(iv) *Reporting and payment of tax on excess interest.* The amount of tax due under section 884(f) and this section with respect to excess interest of a foreign corporation shall be reported on the foreign corporation's income tax return for the taxable year in which the excess interest is treated as paid to the foreign corporation under section 884(f)(1)(B) and paragraph(a)(2) of this section, and shall not be subject to withholding under section 1441 or 1442. The tax shall be due and payable as provided in section 6151 and such other sections of Subtitle F of the Internal Revenue Code as apply, and estimated tax payments shall be due with respect to a foreign corporation's liability for the tax on excess interest as provided in section 6655.

(3) *Original issue discount.* For purposes of this section, the term "interest" includes original issue discount, as defined in section 1273(a)(1).

(4) *Examples.* The application of this paragraph (a) is illustrated by the following examples.

Example 1. Taxation of branch interest and excess interest. Foreign corporation A, a calendar year taxpayer that is not a corporation described in paragraph (b)(2) of this section (relating to banks), has $120 of interest apportioned to ECI under § 1.882–5 for 1993. A's branch interest (as defined in paragraph (b) of this section) for 1993 is as follows: $55 of portfolio interest (as defined in section 871(h)(2)) to B, a nonresident alien; $25 of interest to foreign corporation C, which owns 15 percent of the combined voting power of A's stock, with respect to bonds issued by A; and $20 to D, a domestic corporation. B and C are not engaged in the conduct of a trade or business in the United States. A, B and C are residents of countries with which the United States does not have an income tax treaty. The interest payments made to B and D are not subject to tax under section 871(a) or 881 and are not subject to withholding under section 1441 or 1442. The payment to C, which does not qualify as portfolio interest because C owns at least 10 percent of the combined voting power of A's stock, is subject to withholding of $7.50 ($25 × 30%). In addition, because A's interest apportioned to ECI under § 1.882–5 ($120) exceeds its branch interest ($100), A has excess interest of $20, which is subject to a tax of $6 ($20 × 30%) under section 881. The tax on A's excess interest must be reported on A's income tax return for 1993.

Example 2. Taxation of excess interest of a bank. Foreign corporation A, a calendar year taxpayer, is a corporation described in paragraph (b)(2) of this section (relating to banks) and is a resident of a country with which the United States does not have an income tax treaty. A has excess interest of $100 for 1993. At the close of 1993, A has $10,000 of interest-bearing liabilities (including liabilities that give rise to branch interest), of which $8,700 are interest-bearing deposits. For purposes of computing the tax on A's excess interest, $87 of the excess interest ($100 excess interest x ($8,700 interest-bearing deposits/$10,000 interest-bearing liabilities)) is treated as interest on deposits. Thus, $87 of A's excess interest is exempt from tax under section 881(a) and the remaining $13 of excess interest is subject to a tax of $3.90 ($13 × 30%) under section 881(a).

(b) *Branch interest*—(1) *Definition of branch interest of a foreign corporation that is not a bank.* For purposes of this section, the term "branch interest" means interest paid by a foreign corporation (other than a corporation described in paragraph (b)(2) of this section) with respect to a liability—

(i) Shown on the books of a U.S. trade or business of the foreign corporation for purposes of computing its interest apportioned to ECI under the branch book/dollar pool method of § 1.882–5(b)(3)(i) or the separate currency pool method of § 1.882–5(b)(3)(ii);

(ii) Secured (during at least half the days during the portion of the taxable year in which the interest accrues) predominantly by a U.S. asset (as defined in § 1.884–1(d)) of the foreign corporation unless such liability is secured by substantially all the property of the foreign corporation;

(iii) Taken into account by an insurance company described in section 842(a) on an annual statement approved by the National Association of Insurance Commissioners that is furnished to an insurance regulatory authority of a State or the District of Columbia;

(iv) Giving rise to interest for which no deduction is allowed and either—

(A) The liability is incurred or continued to purchase a U.S. asset (as defined in § 1.884–1(d)); or

(B) The basis of a U.S. asset is increased by the amount of the interest for which no deduction is allowed; or

(v) Specifically identified (as provided in paragraph(b)(3)(i) of this section) as a liability of a U.S. trade or business of the foreign corporation on or before the earlier of the date on which the first payment of interest is made (or deemed made under paragraph (c)(1) of this section) with respect to the liability or the due date (including extensions) of the foreign corporation's income tax return for the taxable year, provided that—

(A) The amount of interest attributable to specifically identified liabilities does not exceed 85 percent of the amount of interest of the foreign corporation that would be excess interest before taking into account interest treated as branch interest by reason of this paragraph (b)(1)(v);

(B) The requirements of paragraph (b)(3)(ii) of this section (relating to notification of recipient of interest) are satisfied; and

(C) The liability is not described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by foreign assets) or in paragraph (b)(1) (i) through (iv) of this section.

A foreign corporation may identify a liability under paragraph (b)(1)(v) of this section whether or not the foreign corporation is engaged in the conduct of a trade or business in the United States. See paragraph (b)(5) of this section for special rules relating to branch interest of a foreign corporation whose U.S. assets equal 80 percent or more of its worldwide assets. See paragraph (b)(6) of this section for a limitation on the amount of branch interest in certain situations in which branch interest exceeds the amount of interest apportioned to ECI under § 1.882–5 and paragraph (b)(7) of this section for the

treatment of interest that is paid and accrued in different taxable years.

(2) *Definition of branch interest of a bank.* In the case of a foreign corporation that maintains and operates a Federal branch, Federal agency, State branch or State agency (as these terms are defined in section 1(b) of the International Banking Act of 1978) (hereinafter "U.S. branch or agency"), the term "branch interest" means, for purposes of this section—

(i) Interest paid by the foreign corporation with respect to a liability described in paragraph (b)(1) (ii) or (iv) of this section (concerning liabilities related to U.S. assets);

(ii) Interest paid with respect to a liability that is treated as a liability of a U.S. branch or agency of the foreign corporation for purposes of regulatory requirements of the Federal Reserve Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, or an equivalent bank regulatory authority of a State or the District of Columbia (including a deposit with an international banking facility (as defined in 12 CFR 204.8(a)(1)) of the foreign corporation that is treated as a liability of such U.S. branch or agency for purposes of such regulatory requirements); and

(iii) Interest paid with respect to a liability properly reflected on the books of a foreign branch, agency, or office of the foreign corporation if personnel of the U.S. branch or agency perform substantially all of the material activities required to incur the liability. However, with respect to the interest described in paragraph (b)(2)(iii) of this section, if less than 80 percent of the gross income of such foreign branch, agency, or office for the taxable year is ECI, the total amount of interest paid or accrued with respect to liabilities of the branch, agency, or office that is treated as branch interest of the foreign corporation for the taxable year shall not exceed the amount of gross income of the branch, agency, or office that is ECI for the taxable year.

(3) *Requirements relating to specifically identified liabilities*—(i) *Method of identification.* A liability described in paragraph (b)(1)(v) of this section is identified as a liability of a U.S. trade or business only if the liability is shown on the records of the U.S. trade or business, or is identified as a liability of the U.S. trade or business on other records of the foreign corporation or on a schedule established for the purpose of identifying the liabilities of the U.S. trade or business. Each such liability must be identified with sufficient specificity so that the amount of branch interest attributable to the liability, and the name and address of the recipient, can be readily identified from such records or schedule. However, with respect to liabilities that give rise to portfolio interest (as defined in sections 871(h) and 881(c)) or that are payable 183 days or less from the date of original issue, and form part of a larger debt issue, such liabilities may be identified by reference to the issue and maturity date, principal amount and interest payable with respect to the entire debt issue. Records or schedules described in this paragraph that identify liabilities that give rise to branch interest must be maintained in the United States by the foreign corporation or an agent of the foreign corporation for the entire period commencing with the due date (including extensions) of the income tax return for the taxable year to which the records or schedules relate and ending with the expiration of the period of limitations for assessment of tax for such taxable year.

(ii) *Notification to recipient.* Interest with respect to a liability described in paragraph (b)(1)(v) of this section shall not be treated as branch interest unless the foreign corporation paying the interest either—

(A) Makes a return, pursuant to section 6049, with respect to the interest payment; or

(B) Sends a notice to the person who receives such interest in a confirmation of the transaction, a statement of account, or a separate notice, within two months of the end of the calendar year in which the interest was paid, stating that the interest paid with respect to the liability is from sources within the United States.

(iii) *Liabilities that do not give rise to branch interest under paragraph (b)(1)(v) of this section.* A liability is described in this paragraph (b)(3)(iii) (and interest with respect to the liability may not be treated as branch interest of a foreign corporation by reason of paragraph (b)(1)(v) of this section) if—

(A) The liability is directly incurred in the ordinary course of the profit-making activities of a trade or business of the foreign corporation conducted outside the United States, as, for example, an account or note payable arising from the purchase of inventory or receipt of services by such trade or business; or

(B) The liability is secured (during more than half the days during the portion of the taxable year in which the interest accrues) predominantly by property that is not a U.S. asset (as defined in § 1.884–1(d)) unless such liability is secured by substantially all the property of the foreign corporation.

(4) *Interbranch interest disregarded.* Interest with respect to liabilities to another office or branch of the same foreign corporation shall be disregarded for purposes of computing branch interest.

(5) *Increase in branch interest where U.S. assets constitute 80 percent or more of a foreign corporation's assets—(i) General rule.* If a foreign corporation would have excess interest before application of this paragraph (b) (5) and the amount of the foreign corporation's U.S. assets as of the close of the taxable year equals or exceeds 80 percent of all money and the aggregate E&P basis of all property of the foreign corporation on such date, then all interest paid and accrued by the foreign corporation during the taxable year that was not treated as branch interest before application of this paragraph (b)(5) and that is not paid with respect to a liability described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by non-U.S. assets) shall be treated as branch interests. However, if application of the preceding sentence would cause the amount of the foreign corporation's branch interest to exceed the amount permitted by paragraph (b)(6)(i) of this section (relating to branch interest in excess of a foreign corporation's interest apportioned to ECI under § 1.882–5) the amount of branch interest arising by reason of this paragraph shall be reduced as provided in paragraphs (b)(6) (ii) and (iii) of this section, as applicable.

(ii) *Example.* The application of this paragraph (b)(5) is illustrated by the following example.

Example. Application of 80 percent test. Foreign corporation A, a calendar year taxpayer, has $90 of interest apportioned to ECI under § 1.882–5 for 1993. Before application of this paragraph (b)(5), A has $40 of branch interest in 1993. A pays $60 of other interest during 1993, none of which is attributable to a liability described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business and liabilities predominantly secured by foreign assets). As of the close of 1993, A has an amount of U.S. assets that exceeds 80 percent of the money and E&P bases of all A's property. Before application of this paragraph (b)(5), A would have $50 of excess interest (i.e., the $90 interest apportioned to its ECI under § 1.882–5 less $40 of branch interest). Under this paragraph (b)(5), the $60 of additional interest paid by A is also treated as branch interest. However, to the extent that treating the $60 of additional interest as branch interest would create an amount of branch interest that would exceed the amount of branch interest permitted under paragraph (b)(6) of this section (relating to branch interest that

exceeds a foreign corporation's interest apportioned to ECI under § 1.882–5) the amount of the additional branch interest is reduced under paragraph (b)(6)(iii) of this section, which generally allows a foreign corporation to specify certain liabilities that do not give rise to branch interest or paragraph (b) (6) (ii) of this section, which generally specifies liabilities that do not give rise to branch interest beginning with the most-recently incurred liability.

(6) *Special rule where branch interest exceeds interest apportioned to ECI of a foreign corporation*—(i) *General rule.* If the amount of branch interest that is both paid and accrued by a foreign corporation during the taxable year (including interest that the foreign corporation elects under paragraph (c)(1) of this section to treat as paid during the taxable year) exceeds the amount of interest apportioned to ECI of a foreign corporation under § 1.882–5 for the taxable year, then the amount of the foreign corporation's branch interest shall be reduced by the amount of such excess as provided in paragraphs (b)(6)(ii) and (iii) of this section, as applicable. The rules of paragraphs (b)(6) (ii) and (iii) of this section shall also apply where the amount of branch interest with respect to liabilities identified under paragraph (b)(1)(v) of this section exceeds the maximum amount that may be treated as branch interest under that paragraph. This paragraph (b)(6) shall apply whether or not a reduction in the amount of branch interest occurs as a result of adjustments made during the examination of the foreign corporation's income tax return, such as a reduction in the amount of interest apportioned to ECI of the foreign corporation under § 1.882–5.

(ii) *Reduction of branch interest beginning with most-recently incurred liability.* Except as provided in paragraph (b)(6)(iii) of this section (relating to an election to specify liabilities that do not give rise to branch interest), the amount of the excess in paragraph (b)(6)(i) of this section shall first reduce branch interest attributable to liabilities described in paragraph (b)(1)(v) of this section (relating to liabilities identified as giving rise to branch interest) and then, if such excess has not been reduced to zero, branch interest attributable to the group of liabilities described in paragraphs (b)(1)(i) through (iv) of this section. The reduction of branch interest attributable to each group of liabilities (i.e., liabilities described in paragraph (b)(1)(v) of this section and liabilities described in paragraphs (b)(1)(i) through (iv) of this section) shall be made beginning with interest attributable to the latest-incurred liability and continuing, in reverse chronological order, with branch interest attributable to the next-latest incurred liability. The branch interest attributable to a liability must be reduced to zero before a reduction is made with respect to branch interest attributable to the next-latest incurred liability. Where only a portion of the branch interest attributable to a liability is reduced by reason of this paragraph (b)(6)(ii), the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next latest payment until the amount of branch interest has been reduced by the amount specified in paragraph (b)(6)(i) of this section. The amount of interest that is not treated as branch interest by reason of this paragraph (b)(6)(ii) shall not be treated as paid by a domestic corporation and thus shall not be subject to tax under section 871(a) or 881(a).

(iii) *Election to specify liabilities that do not give rise to branch interest.* For purposes of reducing the amount of branch interest under paragraph (b)(6)(i) of this section, a foreign corporation may, instead of using the method described in paragraph (b)(6)(ii) of this section, elect for any taxable year to specify which liabilities will not be treated as giving rise to branch interest or will be treated as giving rise only in part to branch interest. Branch interest paid during the taxable year with respect to a liability specified under this paragraph (b)(6)(iii) must be reduced to zero before a reduction is made with respect to branch interest attributable to the next-specified liability. If all interest payments with respect to a specified liability, when added to all interest payments with respect to other liabilities specified under this paragraph (b)(6)(iii), would exceed the amount of the reduction under paragraph (b)(6)(i) of this section, then only a portion of the branch interest attributable to that specified liability shall be reduced under this paragraph (b)(6)(iii), and the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next-latest payment until the amount of branch interest has been reduced by the amount of the reduction under paragraph (b)(6)(i) of this section. A foreign corporation that elects to have this paragraph (b)(6)(iii) apply shall note on its books and records maintained in the United States that the liability is not to be treated as giving rise to branch interest, or is to be treated as giving rise to branch interest only in part. Such notation must be made after the close of the taxable year in which the foreign corporation pays the interest and prior to the due date (with extensions) of the foreign corporation's income tax return for the taxable year. However, if the excess interest in paragraph (b)(6)(i) of this section occurs as a result of adjustments made during the examination of the foreign corporation's income tax return, the election and notation may be made at the time of examination. The amount of interest that is not treated as branch interest by reason of this paragraph (b)(6)(iii) shall not be treated as paid by a domestic corporation and thus shall not be subject to tax under section 871 (a) or 881 (a).

(iv) *Examples.* The application of this paragraph (b)(6) is illustrated by the following examples.

Example 1. Branch interest exceeds interest apportioned to ECI with no election in effect. Foreign corporation A, a calendar year, accrual method taxpayer, has interest expense apportioned to ECI under § 1.882–5 of $230 for 1993. A's branch interest for 1993 is as follows:

(i) $130 paid to B, a domestic corporation, with respect to a note issued on March 10, 1993, and secured by real property located in the United States;

(ii) $60 paid to C, an individual resident of country X who is entitled to a 10 percent rate of withholding on interest payments under the income tax treaty between the United States and X, with respect to a note issued on October 15, 1992, which gives rise to interest subject to tax under section 871(a);

(iii) $80 paid to D, an individual resident of country Y who is entitled to a 15 percent rate of withholding on interest payments under the income tax treaty between the United States and Y, with respect to a note issued on February 15, 1993, which gives rise to interest subject to tax under section 871(a); and

(iv) $70 of portfolio interest (as defined in section 871(h) (2)) paid to E, a nonresident alien, with respect to a bond issued on March 1, 1993.

A's branch interest accrues during 1993 for purposes of calculating the amount of A's interest apportioned to ECI under § 1.882–5. A has identified under paragraph (b)(1)(v) of this section the liabilities described in paragraphs (ii), (iii) and (iv) of this example. A has not made an election under paragraph (b)(6)(iii) of this section to specify liabilities that do not give rise to branch interest. The amount of A's branch interest in 1993 is limited under paragraph (b)(6)(i) of this section to $230, the amount of the interest apportioned to A's ECI for 1993. The amount of A's branch interest must thus be reduced by $110 ($340–$230) under paragraph (b)(6)(ii) of this section. The reduction is first made with respect to interest attributable to liabilities described in paragraph (b)(1)(v) of this section (i.e., liabilities identified as giving rise to branch interest) and, within the group of liabilities described in paragraph (b)(1)(v) of this section, is first made with respect to the latest-incurred liability. Thus, the $70 of interest paid to E with respect to the bond issued on March 1, 1993, and $40 of the $80 of interest paid to D with respect to the note issued on February 15, 1993, are not treated as branch interest. The interest paid to D is

no longer subject to tax under section 871(a), and D may claim a refund of amounts withheld with respect to the interest payments. There is no change in the tax consequences to E because the interest received by E was portfolio interest and was not subject to tax when it was treated as branch interest.

Example 2. Effect of election to specify liabilities. Assume the same facts as in *Example 1* except that A makes an election under paragraph (b)(6)(iii) of this section to specify which liabilities are not to be treated as giving rise to branch interest. A specifies the liability to D, who would be taxable at a rate of 15 percent on interest paid with respect to the liability, as a liability that does not give rise to branch interest, and D is therefore not subject to tax under section 871 (a) and is entitled to a refund of amounts withheld with respect to the interest payments. A also specifies the liability to C as a liability that gives rise to branch interest only in part. As a result, $30 of the $60 of interest paid to C is not treated as branch interest, and C is entitled to a refund with respect to the $30 of interest that is not treated as branch interest.

(7) *Effect of election under paragraph (c)(1) of this section to treat interest as if paid in year of accrual.* If a foreign corporation accrues an interest expense in a taxable year earlier than the taxable year of payment and elects under paragraph (c)(1) of this section to compute its excess interest as if the interest expense were branch interest paid in the year of accrual, the interest expense shall be treated as branch interest that is paid at the close of such year (and not in the actual year of payment) for all purposes of this section. Such interest shall thus be subject to tax under section 871(a) or 881(a) and withholding under section 1441 or section 1442, as if paid on the last day of the taxable year of accrual. Interest that is treated under paragraph (c)(1) of this section as paid in a later year for purposes of computing excess interest shall be treated as paid only in the actual year of payment for all purposes of this section other than paragraphs (a)(2) and (c)(1) of this section (relating to excess interest).

(8) *Effect of treaties*—(i) *Payor's treaty.* In the case of a foreign corporation's branch interest, relief shall be available under an article of an income tax treaty between the United States and the foreign corporation's country of residence relating to interest paid by the foreign corporation only if, for the taxable year in which the branch interest is paid (or if the branch interest is treated as paid in an earlier taxable year under paragraph (b)(7) of this section, for the earlier taxable year)—

(A) The foreign corporation meets the requirements of the limitation on benefits provision, if any, in the treaty, and either—

(*1*) The corporation is a qualified resident (as defined in § 1.884–5(a)) of that foreign country in such year; or

(*2*) The corporation meets the requirements of paragraph (b)(8)(iii) of this section in such year; or

(B) The limitation on benefits provision, or an amendment to that provision, entered into force after December 31, 1986.

(ii) *Recipient's treaty.* A foreign person (other than a foreign corporation) that derives branch interest is entitled to claim benefits under provisions of an income tax treaty between the United States and its country of residence relating to interest derived by the foreign person. A foreign corporation may claim such benefits if it meets, with respect to the branch interest, the requirements of the limitation on benefits provision, if any, in the treaty and—

(A) The foreign corporation meets the requirements of paragraphs (b)(8)(i)(A) or (B) of this section; and

(B) In the case of interest paid in a taxable year beginning after December 31, 1988, with respect to an obligation with a maturity not exceeding one year, each foreign corporation that beneficially owned the obligation prior to maturity was a qualified resident (for the period specified in paragraph (b)(8)(i) of this section) of a foreign country with which the United States has an income tax treaty or met the requirements of the limitation on benefits provision in a treaty with respect to the interest payment and such provision entered into force after December 31, 1986.

(iii) *Presumption that a foreign corporation continues to be a qualified resident.* For purposes of this paragraph (b)(8), a foreign corporation that was a qualified resident for the prior taxable year because it fulfills the requirements of § 1.884–5 shall be considered a qualified resident with respect to branch interest that is paid or received during the current taxable year if—

(A) In the case of a foreign corporation that met the stock ownership and base erosion tests in § 1.884–5(b) and (c) for the preceding taxable year, the foreign corporation does not know, or have reason to know, that either 50 percent of its stock (by value) is not beneficially owned (or treated as beneficially owned by reason of § 1.884–5(b)(2)) by qualifying shareholders at any time during the portion of the taxable year that ends with the date on which the interest is paid, or that the base erosion test is not met during the portion of the taxable year that ends with the date on which the interest is paid;

(B) In the case of a foreign corporation that met the requirements of § 1.884–5(d) (relating to publicly-traded corporations) for the preceding taxable year, the foreign corporation is listed on an established securities exchange in the United States or its country of residence at all times during the portion of the taxable year that ends with the date on which the interest is paid and does not fail the requirements of § 1.884–5(d)(4)(iii) (relating to certain closely-held corporations) at any time during such period; or

(C) In the case of a foreign corporation that met the requirements of § 1.884–5(e) (relating to the active trade or business test) for the preceding taxable year, the foreign corporation continues to operate (other than in a nominal degree), at all times during the portion of the taxable year that ends with the date on which the interest is paid, the same business in the U.S. and its country of residence that caused it to meet such requirements for the preceding taxable year.

(iv) *Treaties other than income tax treaties.* A treaty that is not an income tax treaty does not provide any benefits with respect to branch interest.

(v) *Effect of income tax treaties on interest paid by a partnership.* If a foreign corporation is a partner (directly or indirectly) in a partnership that is engaged in a trade or business in the United States and owns an interest of 10 percent or more (as determined under the attribution rules of section 318) in the capital, profits, or losses of the partnership at any time during the partner's taxable year, the relief that may be claimed under an income tax treaty with respect to the foreign corporation distributive share of interest paid or treated as paid by the partnership shall not exceed the relief that would be available under paragraphs (b)(8) (i) and (ii) of this section if such interest were branch interest of the foreign corporation. See paragraph (c)(2) of this section for the effect on a foreign corporation's excess interest of interest paid by a partnership of which the foreign corporation is a partner.

(vi) *Examples.* The following examples illustrate the application of this paragraph (b)(8).

Example 1. Payor's treaty. The income tax treaty between the United States and country X provides that the United States may not impose a tax on interest paid by a corporation that is a resident of that country (and that is not a domestic corporation) if the recipient of the interest is a nonresident alien or a foreign corporation. Corp A is a qualified

resident of country X and meets the limitation on benefits provision in the treaty. A's branch interest is not subject to tax under section 871(a) or 881(a) regardless of whether the recipient is entitled to benefits under an income tax treaty.

Example 2. Recipient's treaty and interest received from a partnership. A, a foreign corporation, and B, a nonresident alien, are partners in a partnership that owns and operates U.S. real estate and each has a distributive share of partnership interest deductions equal to 50 percent of the interest deductions of the partnership. There is no income tax treaty between the United States and the countries of residence of A and B. The partnership pays $1,000 of interest to a bank that is a resident of a foreign country, Y, and that qualifies under an income tax treaty in effect with the United States for a 5 percent rate of tax on U.S. source interest paid to a resident of country Y. However, the bank is not a qualified resident of country Y and the limitation on benefits provision of the treaty has not been amended since December 31, 1986. The partnership is required to withhold at a rate of 30 percent on $500 of the interest paid to the bank (i.e., A's 50 percent distributive share of interest paid by the partnership) because the bank cannot, under paragraph (b)(8)(iv) of this section, claim greater treaty benefits by lending money to the partnership than it could claim, if it lent money to A directly and the $500 were branch interest of A.

(c) *Rules relating to excess interest—(1) Election to compute excess interest by treating branch interest that is paid and accrued in different years as if paid in year of accrual*—(i) *General rule.* If branch interest is paid in one or more taxable years before or after the year in which the interest accrues, a foreign corporation may elect to compute its excess interest as if such branch interest were paid on the last day of the taxable year in which it accrues, and not in the taxable year in which it is actually paid. The interest expense will thus reduce the amount of the foreign corporation's excess interest in the year of accrual rather than in the year of actual payment. Except as provided in paragraph (c)(1)(ii) of this section, if an election is made for a taxable year, this paragraph (c)(1)(i) shall apply to all branch interest that is paid or accrued during that year. See paragraph (b)(7) of this section for the effect of an election under this paragraph (c)(1) on branch interest that accrues in a taxable year after the year of payment.

(ii) *Election not to apply in certain cases.* An election under this paragraph (c)(1) shall not apply to an interest expense that accrued in a taxable year beginning before January 1, 1987, and shall not apply to an interest expense that was paid in a taxable year beginning before such date unless the interest was income from sources within the United States. An election under this paragraph (c)(1) shall not apply to branch interest that accrues during the taxable year and is paid in an earlier taxable year if the branch interest reduced excess interest in such earlier year. However, a foreign corporation may amend its income tax return for such earlier taxable year so that the branch interest does not reduce excess interest in such year.

(iii) *Requirements for election.* A foreign corporation that elects to apply this paragraph (c)(1) shall attach to its income tax return (or to an amended income tax return) a statement that it elects to have the provisions of this paragraph (c)(1) apply, or shall provide written notice to the Commissioner during an examination that it elects to apply this paragraph (c)(1). The election shall be effective for the taxable year to which the return relates and for all subsequent taxable years unless the Commissioner consents to revocation of the election.

(iv) *Examples.* The following examples illustrate the application of this paragraph (c)(1).

Example 1. Interest accrued before paid. Foreign corporation A, a calendar year, accrual method taxpayer, has $100 of interest apportioned to ECI under § 1.882–5 for 1993. A has $60 of branch interest in 1993 before application of this paragraph (c)(1). A has an interest expense of $20 that properly accrues for tax purposes in 1993 but is not paid until 1994. When the interest is paid in 1994 it will meet the requirements for branch interest under paragraph (b)(1) of this section. A makes a timely election under this paragraph (c)(1) to treat the accrued interest as if it were paid in 1993. A will be treated as having branch interest of $80 for 1993 and excess interest of $20 in 1993. The $20 of interested treated as branch interest of A in 1993 will not again be treated as branch interest in 1994.

Example 2. Interest paid before accrued. Foreign corporation A, a calendar year, accrual method taxpayer, has $60 of branch interest in 1993. The interest expense does not accrue until 1994 and the amount of interest apportioned to A's ECI under § 1.882–5 is zero for 1993 and $60 for 1994. A makes an election under this paragraph (c)(1) with respect to 1993. As a result of the election, A's $60 of branch interest in 1993 reduces the amount of A's excess interest for 1994 rather than in 1993.

(2) *Interest paid by a partnership*)—(i) *General rule.* Except as otherwise provided in paragraphs (c)(2) (i) and (ii) of this section, if a foreign corporation is a partner in a partnership that is engaged in trade or business in the United States, the amount of the foreign corporation's distributive share of interest paid or accrued by the partnership shall reduce (but not below zero) the amount of the foreign corporation's excess interest for the year to the extent such interest is taken into account by the foreign corporation in that year for purposes of calculating the interest apportioned to the ECI of the foreign corporation under § 1.882–5. A foreign corporation's excess interest shall not be reduced by its distributive share of partnership interest that is attributable to a liability described in paragraph (b)(3)(iii) of this section (relating to interest on liabilities incurred in the ordinary course of a foreign business or secured predominantly by assets that are not U.S. assets) or would be described in paragraph (b)(3)(iii) of this section if entered on the partner's books. See paragraph (b)(8)(v) of this section for the effect of income tax treaties on interest paid by a partnership.

(ii) *Special rule for interest that is paid and accrued in different years.* Paragraph (c)(2)(i) of this section shall not apply to any portion of a foreign corporation's distributive share of partnership interest that is paid and accrued in different taxable years unless the foreign corporation has an election in effect under paragraph (c)(1) of this section that is effective with respect to such interest and any tax due under section 871(a) or 881(a) with respect to such interest has been deducted and withheld at source in the earlier of the taxable year of payment or accrual.

(3) *Effect of treaties*—(i) *General rule.* The rate of tax imposed on the excess interest of a foreign corporation that is a resident of a country with which the United States has an income tax treaty shall not exceed the rate provided under such treaty that would apply with respect to interest paid by a domestic corporation to that foreign corporation if the foreign corporation meets, with respect to the excess interest, the requirements of the limitations on benefits provision, if any, in the treaty and either—

(A) The corporation is a qualified resident (as defined in § 1.884–5(a)) of that foreign country for the taxable year in which the excess interest is subject to tax; or

(B) The limitation on benefits provision, or an amendment to that provision, entered into force after December 31, 1986.

(ii) *Provisions relating to interest paid by a foreign corporation.* Any provision in an income tax treaty that exempts or reduces the rate of tax on interest paid by a foreign corporation does not prevent imposition of the tax on excess interest or reduce the rate of such tax.

(4) *Example.* The application of paragraphs (c)(2) and (3) of this section is illustrated by the following example.

Example. Interest paid by a partnership. Foreign corporation A, a calendar year taxpayer, is not a resident of a foreign country with which the United States has an income tax treaty. A is engaged in the conduct of a trade or business both in the United States and in foreign countries, and owns a 50 percent interest in X, a calendar year partnership engaged in the conduct of a trade or business in the United States. For 1993, all of X's liabilities are of a type described in paragraph (b)(1) of this section (relating to liabilities on U.S. books) and none are described in paragraph (b)(3)(iii) of this section (relating to liabilities that may not give rise to branch interest). A's distributive share of interest paid by X in 1993 is $20. For 1993, A has $150 of interest apportioned to its ECI under § 1.882–5, $120 of which is attributable to branch interest. Thus, the amount of A's excess interest for 1993, before application of paragraph (c)(2)(i) of this section, is $30. Under paragraph (c)(2)(i) of this section, A's $30 of excess interest is reduced by $20, representing A's share of interest paid by X. Thus, the amount of A's excess interest for 1993 is reduced to $10. A is subject to a tax of 30 percent on its $10 of excess interest.

(d) *Stapled entities.* A foreign corporation that is treated as a domestic corporation by reason of section 269B (relating to stapled entities) shall continue to be treated as a foreign corporation for purposes of section 884 (f) and this section, notwithstanding section 269B and the regulations thereunder. Interest paid by such foreign corporation shall be treated as paid by a domestic corporation and shall be subject to the tax imposed by section 871 (a) or 881 (a), and to withholding under section 1441 and 1442, as applicable, to the extent such interest is not subject to tax by reason of section 884(f) and this section.

(e) *Effective dates.* This section is effective for taxable years beginning October 13, 1992, and for payments of interest described in section 884 (f)(1)(A) made (or treated as made under paragraph (b)(7) of this section) during taxable years of the payor beginning after such date. With respect to taxable years beginning before October 13, 1992 and after December 31, 1986, a foreign corporation may elect to apply this section in lieu of § 1.884–4T of the temporary regulations (as contained in the CFR edition revised as of April 1, 1992) as they applied to the foreign corporation after issuance of Notice 89–80, 1989–2 C.B. 394, but only if the foreign corporation has made an election under § 1.884–1 (i) to apply § 1.884–1 in lieu of § 1.884–1T (as contained in the CFR edition revised as of April 1, 1992) for that year, and the statute of limitations for assessment of a deficiency has not expired for that taxable year. Once an election has been made, an election under this section shall apply to all subsequent taxable years.

(f) *Transition rules*—(1) *Election under paragraph (c)(1) of this section.* If a foreign corporation has made an election described in § 1.884–4T(b)(7) (as contained in the CFR edition revised as of April 1, 1992) with respect to interest that has accrued and been paid in different taxable years, such election shall be effective for purposes of paragraph (c)(1) of this section as if the corporation had made the election under paragraph (c)(1) of this section of these regulations.

(2) *Waiver of notification requirement for non-banks under Notice 89–80.* If a foreign corporation that is not a bank has made an election under Notice 89–80 to apply the rules in part 2 of section I of the Notice in lieu of the rules in § 1.884–4T(b) (as contained in the CFR edition revised as of April 1, 1992) to determine the amount of its interest paid and excess interest in taxable years beginning prior to 1990, the requirement that the foreign corporation satisfy the notification requirements described in paragraph (b)(3)(ii) of this section is waived with respect to interest paid in taxable years ending on or before the date the Notice was issued.

(3) *Waiver of legending requirement for certain debt issued prior to January 3, 1989.* For purposes of sections 871(h), 881(c), and this section, branch interest of a foreign corporation that would be treated as portfolio interest under section 871(h) or 881(c) but for the fact that it fails to meet the requirements of section 163(f)(2)(B)(ii)(II) (relating to the legend requirement), shall nevertheless be treated as portfolio interest provided the interest arises with respect to a liability incurred by the foreign corporation before January 3, 1989, and interest with respect to the liability was treated as branch interest in a taxable year beginning before January 1, 1990.

§ 1.884–5 Qualified resident.

(a) *Definition of qualified resident.* A foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty in effect if, for the taxable year, the foreign corporation is a resident of that country (within the meaning of such treaty) and either—

(1) Meets the requirements of paragraphs (b) and (c) of this section (relating to stock ownership and base erosion);

(2) Meets the requirements of paragraph (d) of this section (relating to publicly-traded corporations);

(3) Meets the requirements of paragraph (e) of this section (relating to the conduct of an active trade or business); or

(4) Obtains a ruling as provided in paragraph (f) of this section that it shall be treated as a qualified resident of its country of residence.

(b) *Stock ownership requirement*—(1) *General rule*—(i) *Ownership by qualifying shareholders.* A foreign corporation satisfies the stock ownership requirement of this paragraph (b) for the taxable year if more than 50 percent of its stock (by value) is beneficially owned (or is treated as beneficially owned by reason of paragraph (b)(2) of this section) during at least half of the number of days in the foreign corporation's taxable year by one or more qualifying shareholders. A person shall be treated as a qualifying shareholder only if such person meets the requirements of paragraph (b)(3) of this section and is either—

(A) An individual who is either a resident of the foreign country of which the foreign corporation is a resident or a citizen or resident of the United States;

(B) The government of the country of which the foreign corporation is a resident (or a political subdivision or local authority of such country), or the United States, a State, the District of Columbia, or a political subdivision or local authority of a State;

(C) A corporation that is a resident of the foreign country of which the foreign corporation is a resident and whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in that country or the United States or a domestic corporation whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in the United States;

(D) A not-for profit organization described in paragraph (b)(1)(iv) of this section that is not a pension fund as defined in paragraph (b)(8)(i)(A) of this section and that is organized under the laws of the foreign country of which the foreign corporation is a resident of the United States; or

(E) A beneficiary of certain pension funds (as defined in paragraph (b)(8)(i)(A) of this section) administered in or by the country in which the foreign corporation is a resident to the extent provided in paragraph (b)(8) of this section.

Beneficial owners of an association taxable as a corporation shall be treated as shareholders of such association for purposes of this paragraph (b)(1). If stock of a foreign corporation is owned

by a corporation that is treated as a qualifying shareholder under paragraph (b)(1)(i)(C) of this section, such stock shall not also be treated as owned, directly or indirectly, by any qualifying shareholders of such corporation for purposes of this paragraph (b). Notwithstanding the above, a foreign corporation will not be treated as a qualified resident unless it obtains the documentation described in paragraph (b)(3) of this section to show that the requirements of this paragraph (b)(1)(i) have been met and maintains the documentation as provided in paragraph (b)(9) of this section. See also paragraph (b)(1)(iii) of this section, which treats certain publicly-traded classes of stock as owned by qualifying shareholders.

(ii) *Special rules relating to qualifying shareholders.* For purposes of applying paragraph (b)(1)(i) of this section—

(A) Stock owned on any day shall be taken into account only if the beneficial owner is a qualifying shareholder on that day or, in the case of a corporation or not-for-profit organization that is a qualifying shareholder under paragraph (b)(1)(i) (C) or (D) of this section, for a one-year period that includes such day; and

(B) An individual, corporation or not-for-profit organization is a resident of a foreign country if it is a resident of that country for purposes of the income tax treaty between the United States and that country.

(iii) *Publicly-traded class of stock treated as owned by qualifying shareholders.* A class of stock of a foreign corporation shall be treated as owned by qualifying shareholders if—

(A) The class of stock is listed on an established securities market in the United States or in the country of residence of the foreign corporation seeking qualified resident status; and

(B) The class of stock is primarily and regularly traded on such market (within the meaning of paragraphs (d) (3) and (4) of this section, applied as if the class of stock were the sole class of stock relied on to meet the requirements of paragraph (d)(4)(i)(A)).

For purposes of this paragraph (b), stock in such class shall not also be treated as owned by any qualifying shareholders who own such stock, either directly or indirectly.

(iv) *Special rule for not-for-profit organizations.* A not-for-profit organization is described in paragraph (b)(1)(iv) of this section if it meets the following requirements—

(A) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and it is not organized for profit;

(B) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status;

(C) Either—

(*1*) More than 50 percent of its annual support is expended on behalf of persons described in paragraphs (b)(1)(i)(A) through (E) of this section or on qualified residents of the country in which the organization is organized; or

(*2*) More than 50 percent of its annual support is derived from persons described in paragraphs (b)(1)(i) (A) through (E) of this section or from persons who are qualified residents of the country in which the organization is organized.

For purposes of meeting the requirements of paragraph (b)(1)(iv)(C) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine if such persons are resident in the country in which the not-for-profit organization is organized, provided that the addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary, and the officers, directors or administrators of the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address.

(2) *Rules for determining constructive ownership*—(i) *General rules for attribution.* For purposes of this section, stock owned by a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors or other interest holders as provided in paragraph (b)(2)(ii) through (v) of this section. The proportionate interest rules of this paragraph (b)(2) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period that is taken into account in determining whether a foreign corporation is a qualified resident. Except as otherwise provided, stock treated as owned by a person by reason of this paragraph (b)(2) shall, for purposes of applying this paragraph (b)(2), be treated as actually owned by such person.

(ii) *Partnerships.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership;

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

For purposes of this paragraph (b)(2)(ii), however, all qualifying shareholders that are partners of a partnership shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualifying shareholders that are partners in a partnership are aggregated prior to determining the least of the three percentages.

(iii) *Trusts and estates*—(A) *Beneficiaries.* In general, a person shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the person's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (b)(2)(iii)(A), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualifying shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to extent that a grantor is treated as owning the stock under paragraph (b)(2)(iii)(B) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (b)(2)(iii)(A), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(B) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671

to 679 (relating to grantors and others treated as substantial owners).

(iv) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If there is an agreement, express or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(v) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policy holders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(vi) *Pension funds.* See paragraphs (b)(8) (ii) and (iii) of this section for the attribution of stock owned by a pension fund (as defined in paragraph (b)(8)(i)(A)) to beneficiaries of the fund.

(vii) *Examples.* The rules of paragraph (b)(2)(ii) of this section are illustrated by the following examples.

Example 1. Stock held solely by qualifying shareholders through a partnership. A and B, residents of country X, are qualifying shareholders, within the meaning of paragraphs (b)(1)(i) (A) through (E) of this section, and the sole partners of partnership P. P's only asset is the stock of foreign corporation Z, a country X corporation seeking qualified resident status under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (b)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualifying and non-qualifying shareholders through a partnership. Assume the same facts as in *Example 1* except that C, an individual who is not a qualifying shareholder, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1* except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (b)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (i.e., the least of A and B's aggregate distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock).

Example 3. Stock held through tiered partnerships. Assume the same facts as in *Example 1,* except that P does not own the stock of Z directly, but rather is a partner in partnership P1, which owns the stock of Z. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualifying shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (b)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent X 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualifying shareholders under paragraph (b)(2)(ii) of this section.

(3) *Required documentation*—(i) *Ownership statements, certificates of residency and intermediary ownership statements.* Except as provided in paragraphs (b)(3)(ii), (iii) and (iv) and paragraphs (b)(8) of this section, a person shall only be treated as a qualifying shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (b)(4) of this section and, in the case of an individual who is not a U.S. citizen or resident, also obtains a certificate of residency described in paragraph (b)(5) of this section;

(B) In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary completes an intermediary ownership statement described in paragraph (b)(6) of this section; and

(C) Such ownership statements and certificates of residency are received by the foreign corporation on or before the earlier of the date it files its income tax return for the taxable year to which the statements relate or the due date (including extensions) for filing such return or, in the case of a foreign corporation claiming treaty benefits under § 1.884–4(b)(8) (i) or (ii) (relating to branch interest) on or before the date on which such interest is paid.

(ii) *Substitution of intermediary verification statement for ownership statements and certificates of residency.* If a qualifying shareholder owns stock through an intermediary that is either a domestic corporation, a resident of the United States, or a resident (for treaty purposes) of a country with which the United States has an income tax treaty in effect, the intermediary may provide an intermediary verification statement (as described in paragraph (b)(7) of this section) in place of any relevant ownership statements and certificates of residency from qualifying shareholders, and in place of intermediary ownership statements (or, where applicable, intermediary verification statements) from all intermediaries standing in the chain of ownership between the qualifying shareholders and the intermediary issuing the intermediary verification statement. An intermediary verification statement generally certifies that the verifying intermediary holds the documentation described in the preceding sentence and agrees to make it available to the District Director on request. Such intermediary verification statements, along with an intermediary ownership statement from the verifying intermediary, must be received by the foreign corporation on or before the earlier of the date if files its income tax return for the taxable year to which the statements relate or the due date (including extensions) for filing such return. An indirect owner of a foreign corporation is thus treated as a qualifying shareholder of a foreign corporation if the foreign corporation receives, on or before the time specified above, an intermediary verification statement and an intermediary ownership statement from the verifying intermediary and an intermediary ownership statement from all intermediaries standing in the chain of the verifying intermediary's ownership of its interest in the foreign corporation.

(iii) *Special rule for registered shareholders of widely-held corporations.* An ownership statement and a certificate of residency shall not be required in the case of an individual who is a shareholder of record of a corporation that has at least 250 shareholders if—

(A) The individual owns less than one percent of the stock (by value) (applying the attribution rules of section 318) of the corporation at all times during the taxable year;

(B) The individual's address of record is in the corporation's country of residence and is not a nonresidential address such as a post office box or in care of a financial intermediary or stock transfer agent; and

(C) The officers and directors of the corporation do not know or have reason to know that the individual does not reside at that address.

The rule in this paragraph (b)(3)(iii) may also be applied with respect to individual owners of mutual insurance companies, mutual savings banks or similar entities, provided that the same conditions set forth in this paragraph are met with respect to such individuals.

(iv) *Special rule for pension funds.* See paragraphs (b)(8) (ii) through (v) of this section for special documentation rules applicable to pension funds (as defined in paragraph (b)(8)(i)(A) of this section).

(v) *Reasonable cause exception.* If a foreign corporation does not obtain the documentation described in this paragraph (b)(3) or (b)(8) of this section in a timely manner but is able to show prior to notification of an examination of the return for the taxable year that the failure was due to reasonable cause and not willful neglect, the foreign corporation may perfect the documentation after the deadlines specified in paragraph (b)(3) or (b)(8) of this section. It may make such a showing by providing a written statement to the District Director having jurisdiction over the taxpayer's return or the Office of the Assistant Commissioner (International), as applicable, setting forth the reasons for the failure to obtain the documentation in a timely manner and a describing the documentation that was received after the deadline had passed. Whether a failure to obtain the documentation in a timely manner was due to reasonable cause shall be determined by the District Director or the Office of the Assistant Commissioner (International), as applicable, under all the facts and circumstances.

(4) *Ownership statements from qualifying shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The name, permanent address, and country of residence of the individual and, if the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified resident status, the period during which it was a resident of the foreign corporation's country of residence;

(B) If the individual is a direct beneficial owner of stock in the foreign corporation, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the period of time during the taxable year of the foreign corporation during which the individual owned the stock (or, in the case of an association taxable as a corporation, the amount and nature of the owner's interest in such association);

(C) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that owns (directly or indirectly) stock in the foreign corporation, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary (that is relevant for purposes of attributing ownership in paragraph (b)(2) of this section), and the period of time during the taxable year of the foreign corporation during which the individual held such interest; and

(D) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the foreign corporation, including the name and address of each intermediary standing between the intermediary described in paragraph (b)(4)(i)(C) of this section and the foreign corporation.

(ii) *Ownership statements from governments.* An ownership statement from a government that is a qualifying shareholder is a written statement signed by either—

(A) An official of the governmental authority, agency or office that has supervisory authority with respect to the government's ownership interest who is authorized to sign such a statement on behalf of the authority, agency or office; or

(B) The competent authority of the foreign country (as defined in the income tax treaty between the United States and the foreign country).

Such statement shall provide the title of the official signing the statement and the name and address of the government agency, and shall provide the information described in paragraphs (b)(4)(i) (B) through (D) of this section (substituting "government" for "individual") with respect to the government's direct or indirect ownership of stock in the foreign corporation seeking qualified resident status.

(iii) *Ownership statements from publicly-traded corporations.* An ownership statement from a corporation that is a qualifying shareholder under paragraph (b)(1)(i)(C) of this section is a written statement signed by a person authorized to sign a tax return on behalf of the corporation under penalties of perjury stating—

(A) The name, permanent address, and principal place of business of the corporation (if different from its permanent address);

(B) The information described in paragraphs (b)(4)(i) (B) through (D) of this section (substituting "corporation" for "individual"); and

(C) That the corporation's stock is primarily and regularly traded on an established securities exchange (within the meaning of paragraph (d) of this section) in the United States or its country of residence.

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(8)(i)(A) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (b)(4)(i) (B) through (D) of this section (substituting "not-for-profit organization" for "individual") with respect to the not-for-profit organization's direct or indirect ownership of stock in the foreign corporation seeking qualified resident status; and

(C) That the not-for-profit organization satisfies the requirements of paragraph (b)(1)(iv) of this section.

(v) *Ownership through a nominee.* For purposes of this paragraph (b)(4) and paragraph (b)(6) of this section, a person who owns either stock in a foreign corporation seeking qualified resident status or an interest in an intermediary described in paragraph (b)(4)(i)(C) of this section through a nominee shall be treated as owning such stock or interest directly and must, therefore, provide the information described in paragraphs (b)(4) (i) through (iv) of this section, as applicable. Such person must also provide the name and address of the nominee.

(5) *Certificate of residency.* A certificate of residency must be signed by the relevant authorities (as described below) of the country of residence of the individual shareholder and must state that the individual is a resident of that country for purposes of its income tax laws or, if the authorities do not customarily make such a determination, that the individual has filed a tax return claiming resident status and subjecting the individual's income to tax on a resident basis for the taxable year or period that ends with or within the taxable year for which the corporation is seeking qualified resident status. In

the case of an individual who is not legally required to file a tax return in his or her country of residence or in any other country, a certificate of residency of a parent or guardian residing at such individual's address shall be considered sufficient to meet that individual's obligation under this paragraph (b)(5). The relevant authorities shall be the competent authority of the foreign country of which the foreign corporation is a resident, as defined in the income tax treaty between the foreign country and the United States, or such other governmental office of the foreign country (or political subdivision thereof) that customarily provides statements of residence. Notwithstanding the foregoing, the Commissioner may consult with the competent authority of a country regarding the procedures set forth in this paragraph (b)(5) and if necessary agree on additional or alternative procedures under which these certificates may be issued.

(6) *Intermediary ownership statement.* An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person that would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information:

(i) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary and, if the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law);

(ii) The information described in paragraphs (b)(4)(i) (B) through (D) (substituting "intermediary making the ownership statement" for "individual") with respect to the intermediary's direct or indirect ownership in the stock in the foreign corporation seeking qualified resident status;

(iii) If the intermediary is a nominee for a qualifying shareholder or another intermediary, the name and permanent address of the qualifying shareholder, or the name and principal place of business of such other intermediary;

(iv) If the intermediary is not a nominee for a qualifying shareholder or another intermediary, the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (of if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder) from which the intermediary received an ownership statement and the period of time during the taxable year for which the interest in the intermediary was owned by such shareholder, partner, beneficiary, grantor or other interest holder. For purposes of this paragraph (b)(6)(iv), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (b)(2) of this section. If an intermediary is not required to receive an ownership statement from its individual registered shareholders or other interest holders by reason of paragraph (b)(3)(iii) of this section, then it must provide a list of the names and addresses of such registered shareholders or other interest holders and the aggregate proportionate interest in the intermediary of such registered shareholders or other interest holders.

(7) *Intermediary verification statement.* An intermediary verification statement that may be substituted for certain documentation under paragraph (b)(3)(ii) of this section is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or by a person that would be authorized to sign a tax return on behalf of the intermediary (if the verifying intermediary is not an individual) containing the following information—

(i) The name, principal place of business, and country of residence of the verifying intermediary;

(ii) A statement that the verifying intermediary has obtained either—

(A) An ownership statement and, if applicable, a certificate of residency from a qualifying shareholder with respect to the foreign corporation seeking qualified resident status, and an intermediary ownership statement from each intermediary standing in the chain of ownership between the verifying intermediary and the qualifying shareholder; or

(B) An intermediary verification statement substituting for the documentation described in paragraph (b)(7)(ii)(A) and an intermediary ownership statement from such intermediary and each intermediary standing in the chain of ownership between such intermediary and the verifying intermediary;

(iii) The proportionate interest (as computed using the documentation described in paragraph (b)(7)(ii) of this section) in the intermediary owned directly or indirectly by qualifying shareholders;

(iv) An agreement to make available to the Commissioner at such time and place as the Commissioner may request the underlying documentation described in paragraph (b)(7)(ii) of this section; and

(v) A specific and valid waiver of any right to bank secrecy or other secrecy under the laws of the country in which the verifying intermediary is located, with respect to any qualifying shareholder ownership statements, certificates of residency, intermediary ownership statements or intermediary verification statements that the verifying intermediary has obtained pursuant to paragraph (b)(7)(ii) of this section.

A foreign corporation may combine, in a single statement, the information in an intermediary ownership statement and the information in an intermediary verification statement.

(8) *Special rules for pension funds*—(i) *Definitions*—(A) *Pension fund.* For purposes of this section, the term "pension fund" shall mean a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(B) *Beneficiary.* For purposes of this section, the term "beneficiary" of a pension fund shall mean any person who has made contributions to the pension fund, or on whose behalf contributions have been made, and who is currently receiving retirement, disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested.

(ii) *Government pension funds.* An individual who is a beneficiary of a pension fund that would be a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) of the regulations (relating to pension funds established for the benefit of employees or former employees of a foreign government) shall be treated as a qualifying shareholder of a foreign corporation in which the pension fund owns a direct or indirect interest without having to meet the documentation requirements under paragraph (b)(3)(i)(A) of this section, if the foreign corporation is resident in the country of the foreign sovereign and the trustees, directors, or other administrators of the pension fund provide, with the pension fund's intermediary ownership statement described in paragraph (b)(6) of this section, a written statement that the

fund is a controlled entity described in this paragraphs (b)(8)(ii). See paragraph (b)(4)(ii) of this section regarding an ownership statement from a pension fund that is an integral part of a foreign government.

(iii) *Non-government pension funds.* For purposes of this section, an individual who is a beneficiary of a pension fund not described in paragraph (b)(8)(ii) of this section shall be treated as a qualifying shareholder of a foreign corporation owned directly or indirectly by such pension fund without having to meet the documentation requirements under paragraph (b)(3)(i)(A) of this section, if—

(A) The pension fund is administered in the foreign corporation's country of residence and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) The pension fund is generally exempt from income taxation in its country of administration;

(C) The pension fund has 100 or more beneficiaries;

(D) The beneficiary's address, as it appears on the records of the fund, is in the foreign corporation's country of residence or the United States and is not a nonresidential address, such as a post office box or in care of a financial intermediary, and none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country or the United States;

(E) In the case of a pension fund that has fewer than 500 beneficiaries, the beneficiary's employer provides (if the beneficiary is currently contributing to the fund) to the trustees, directors or other administrators a written statement that the beneficiary is currently employed in the country in which the fund is administered or is usually employed in such country but is temporarily employed by the company outside of the country; and

(F) The trustees, directors or other administrators of the pension fund provide, with the pension fund's intermediary ownership statement described in paragraph (b)(6) of this section, a written statement signed under penalties of perjury declaring that the pension fund meets the requirements in paragraphs (b)(8)(iii) (A), (B), and (C) of this section and giving the number of beneficiaries who meet the requirements of paragraph (b)(8)(iii)(D) of this section, and, if applicable, paragraph (b)(8)(iii)(E) of this section.

(iv) *Computation of beneficial interests in non-government pension funds.* The number of shares in a foreign corporation that are held indirectly by beneficiaries of a pension fund who are qualifying shareholders may be computed based on the ratio of the number of such beneficiaries to all beneficiaries of the pension fund (rather than on the basis of the rules in paragraph (b)(2) of this section) if—

(A) The pension fund meets the requirements of paragraphs (b)(8)(iii) (A), (B), and (C) of this section;

(B) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that the ratio of the pension fund's beneficiaries who are residents of either the country in which the pension fund is administered or of the United States to all beneficiaries of the pension fund would differ significantly from the ratio of the sum of the actuarial interests of such residents in the pension fund to the actuarial interests of all beneficiaries in the pension fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the ratio of actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(C) Either—

(*1*) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are qualified residents of the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(*2*) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(*3*) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(D) The trustees, directors or other administrators provide, with the pension fund's intermediary ownership statement described in paragraph (b)(6) of this section, a written statement signed under penalties of perjury certifying that the requirements in paragraphs (b)(8)(iv) (A), (B), and either (C)(*1*), (C)(*2*) or (C)(*3*) of this section have been met.

The statement described in paragraph (b)(8)(iv) (D) of this section may be combined, in a single statement, with the information required in paragraph (b)(8)(iv) (F) of this section.

(v) *Time for making determinations.* The determinations required to be made under this paragraph (b)(8) shall be made using information shown on the records of the pension fund for a date on or after the beginning of the foreign corporation's taxable year to which the determination is relevant.

(9) *Availability of documents for inspection*—(i) *Retention of documents by the foreign corporation.* The documentation described in paragraphs (b)(3) and (b)(8) of this section must be retained by the foreign corporation until expiration of the period of limitations for the taxable year to which the documentation relates and must be made available for inspection by the District Director at such time and place as the District Director may request.

(ii) *Retention of documents by an intermediary issuing an intermediary verification statement.* The documentation upon which an intermediary relies to issue an intermediary verification statement under paragraph (b)(7) of this section must be retained by the intermediary for a period of six years from the date of issuance of the intermediary verification statement and must be made available for inspection by the District Director at such time and place as the District Director may request.

(10) *Examples.* The application of this paragraph (b) is illustrated by the following examples.

Example 1. Foreign corporation A is a resident of country L, which has an income tax treaty in effect with the United States. Foreign corporation A has one class of stock issued and outstanding consisting of 1,000 shares, which are beneficially owned by the following alien individuals, directly or by application of paragraph (b)(2) of this section:

Individual	Shares owned, directly or indirectly by application of paragraph (b)(2) of this section	Percentage
T—resident of the U.S.	200	20
U—resident of country L	400	40
V—resident of country M	100	10
W—resident of country L	210	21
X—resident of country N	90	9
Total	1,000	100

(i) T owns his 200 shares directly and is a beneficial owner.

(ii) U and V own, respectively, an 80 percent and a 20 percent actuarial interest in foreign trust FT, (which interest does not differ from their respective interests in the stock owned by FT), which beneficially owns 100 percent of the stock of a foreign corporation B with bearer shares, which beneficially owns 500 shares of foreign corporation A. Foreign corporation B is incorporated in a country that does not have an income tax treaty with the United States. The foreign trust has deposited the bearer shares it owns in B with a bank in a foreign country that has an income tax treaty with the United States.

(iii) W beneficially owns all the shares of foreign corporation C, which are registered in the name of individual Z, a nominee, who resides in country L; foreign corporation C beneficially owns a 70 percent interest in foreign corporation D, which beneficially owns 300 shares of A. D's shares are bearer shares that C (not a resident of a country with which the United States has an income tax treaty) has deposited with a bank in a foreign country that has an income tax treaty with the United States.

(iv) X beneficially owns a 30 percent interest in foreign corporation D.

(v) A is a qualified resident of country L if it obtains the applicable documentation described in paragraph (b)(3) of this section either with respect to ownership by individuals U and W or with respect to ownership by individuals T and U, since either combination of qualifying shareholders of foreign corporation A will exceed 50 percent.

Example 2. Assume the same facts as in *Example 1* and assume that foreign corporation A chooses to obtain documentation with respect to individuals T and U.

(i) A must obtain, pursuant to paragraph (b)(3)(i) of this section, an ownership statement (as described in paragraph (b)(4)(i) of this section) signed by T. T is not required to furnish a certificate of residency because T is a U.S. resident.

(ii) U must provide foreign trust FT with an ownership statement and certificate of residency, as described in paragraphs (b)(4) and (b)(5) of this section. The trustees of FT must provide the depository bank holding foreign corporation B's bearer shares with an intermediary ownership statement concerning its beneficial ownership of B's shares and must attach to it the documentation provided by U. The depository bank must provide B with an intermediary ownership statement regarding its holding of B shares on behalf of FT and has the choice of attaching—

(A) The documentation from U and the intermediary ownership statement from FT; or

(B) An intermediary verification statement described in paragraph (b)(7) of this section, in which case foreign corporation B would not be provided with U's individual documentation or FT's intermediary ownership statement, both of which are retained by the depository bank.

(iii) In either case, B must then provide foreign corporation A with an intermediary ownership statement regarding its direct beneficial ownership of shares in A and, as the case may be, either—

(A) U's documentation and the intermediary ownership statements by FT and the depository bank; or

(B) The depository bank's intermediary ownership and verification statements.

(iv) Thus, with respect to U, A must obtain under paragraph (b)(3)(i) of this section the individual documentation regarding U and an intermediary ownership statement from each intermediary standing in the chain of U's indirect beneficial ownership of shares in A, i.e., from FT, the depository bank and B. In the alternative, A must obtain under paragraph (b)(3)(ii) of this section an intermediary verification statement issued by the depository bank and an intermediary ownership statement from the bank and from B, which, in this example, are the only intermediaries standing in the chain of ownership of the verifying intermediary (i.e., the depository bank).

Example 3. Assume the same facts as in *Example 1.* In addition, assume that foreign corporation A chooses to obtain documentation with respect to individuals U and W. With respect to U, A must obtain the same documentation that is described in *Example 2.* With respect to W, A must obtain, under paragraph (b)(3)(i) of this section, individual documentation regarding W and an intermediary ownership statement from each intermediary standing in the chain of W's indirect beneficial ownership of shares in A, i.e., from individual Z, foreign corporation C, the depository bank in the foreign treaty country, and foreign corporation D. In the alternative, A must obtain, under paragraph (b)(3)(ii) of this section, either—

(i) An intermediary verification statement by the depository bank in the foreign treaty country and an intermediary ownership statement from the bank and from D; or

(ii) An intermediary verification statement from Z and an intermediary ownership statement from Z and from each intermediary standing in the chain of ownership of shares in foreign corporation A, i.e., from C, the depository bank in the foreign treaty country and D. C may not issue an intermediary verification statement because it is not a resident of a country with which the United States has an income tax treaty.

(c) *Base erosion.* A foreign corporation satisfies the requirement relating to base erosion for a taxable year if it establishes that less than 50 percent of its income for the taxable year is used (directly or indirectly) to make deductible payments in the current taxable year to persons who are not residents (or, in the case of foreign corporations, qualified residents) of the foreign country of which the foreign corporation is a resident and who are not citizens or residents (or, in the case of domestic corporations, qualified residents) of the United States. Whether a domestic corporation is a qualified resident of the United States shall be determined under the principles of this section. For purposes of this paragraph (c), the term "deductible payments" includes payments that would be ordinarily deductible under U.S. income tax principles without regard to other provisions of the Code that may require the capitalization of the expense, or disallow or defer the deduction. Such payments include, for example, interest, rents, royalties and reinsurance premiums. For purposes of this paragraph (c), the income of a foreign corporation means the corporation's gross income for the taxable year (or, if the foreign corporation has no gross income for the taxable year, the average of its gross income for the three previous taxable years) under U.S. tax principles, but not excluding items of income otherwise excluded from gross income under U.S. tax principles.

(d) *Publicly-traded corporations*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country for any taxable year in which—

(i) Its stock is primarily and regularly traded (as defined in paragraphs (d) (3) and (4) of this section) on one or more established securities markets (as defined in paragraph (d)(2) of this section) in that country, or in the United States, or both; or

(ii) At least 90 percent of the total combined voting power of all classes of stock of such foreign corporation entitled to vote and at least 90 percent of the total value of the stock of such foreign corporation is owned, directly or by application of paragraph (b)(2) of this section, by a foreign corporation that is a resident of the same foreign country or a domestic corporation and the stock of such parent corporation is primarily and regularly traded on an established securities market in that foreign country or in the United States, or both.

(2) *Established securities market*—(i) *General rule.* For purposes of section

884, the term "established securities market" means, for any taxable year—

(A) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located, is the principal exchange in that country, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(B) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f); and

(C) A domestic over-the-counter market (as defined in paragraph (d)(2)(iv) of this section).

(ii) *Exchanges with multiple tiers.* If a principal exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(iii) *Computation of dollar value of stock traded.* For purposes of paragraph (d)(2)(i)(A) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges, located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(iv) *Definition of over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(v) *Discretion to determine that an exchange qualifies as an established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities exchange that does not meet the requirements of paragraph (d)(2)(i)(A) of this section qualifies as an established securities market. Such a determination will be made only if it is established that—

(A) The exchange, in substance, has the attributes of an established securities market (including adequate trading volume, and comparable listing and financial disclosure requirements);

(B) The rules of the exchange ensure active trading of listed stocks; and

(C) The exchange is a member of the International Federation of Stock Exchanges.

(vi) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities exchange that meets the requirements of paragraph (d)(2)(i) of this section does not qualify as an established securities market. Such determination shall be made if, in the view of the Commissioner—

(A) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(B) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(3) *Primarily traded.* For purposes of this section, stock of a corporation is "primarily traded" on one or more established securities markets in the corporation's country of residence or in the United States in any taxable year if, with respect to each class described in paragraph (d)(4)(I)(i)(A) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(i) The number of shares in each class that are traded during the taxable year on all established securities markets in the corporation's country of residence or in the United States during the taxable year exceeds

(ii) The number of shares in each such class that are traded during that year on established securities markets in any other single foreign country.

(4) *Regularly traded*—(i) *General rule.* For purposes of this section, stock of a corporation is "regularly traded" on one or more established securities markets in the foreign corporation's country of residence or in the United States for the taxable year if—

(A) One or more classes of stock of the corporation that, in the aggregate, represent 80 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year;

(B) With respect to each class relied on to meet the 80 percent requirement of paragraph (d)(4)(i)(A) of this section—

(1) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(2) The aggregate number of shares in each such class that is traded on such market or markets during the taxable year is at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the number of days in the short taxable year divided by 365).

If stock of a foreign corporation fails the 80 percent requirement of paragraph (d)(4)(i)(A) of this section, but a class of such stock meets the trading requirements of paragraph (d)(4)(i)(B) of this section, such class of stock may be taken into account under paragraph (b)(1)(iii) of this section as owned by qualifying shareholders for purposes of meeting the ownership test of paragraph (b)(1) of this section.

(ii) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be treated as meeting the trading requirements of paragraph (d)(4)(i)(B) of this section if the stock is regularly quoted by brokers or dealers making a market in the stock. A broker or dealer makes a market in a stock only if the broker or dealer holds himself out to buy or sell the stock at the quoted price.

(iii) *Closely-held classes of stock not treated as meeting trading requirement*—(A) *General rule.* A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(4)(i)(B) of this section (or the requirements of paragraph (d)(4)(ii) of this section) for a taxable year if, at any time during the taxable year, one or more persons who are not qualifying shareholders (as defined in paragraph (b)(1) of this section) and who each beneficially own 5 percent or more of the value of the outstanding shares of the class of stock own, in the aggregate, 50 percent or more of the outstanding shares of the class of stock for more than 30 days during the taxable year. For purposes of the preceding sentence, shares shall not be treated as owned by a qualifying shareholder unless such shareholder provides to the foreign corporation, by the time prescribed in paragraph (b)(3) of this section, the documentation described in paragraph (b)(3) of this section necessary to establish that it is a qualifying shareholder. For purposes of this paragraph (d)(4)(iii)(A), shares of stock

owned by a pension fund, as defined in paragraph (b)(8)(i)(A) of this section, shall be treated as beneficially owned by the beneficiaries of such fund, as defined in paragraph (b)(8)(i)(B) of this section.

(B) *Treatment of related persons.* Persons related within the meaning of section 267(b) shall be treated as one person for purposes of this paragraph (d)(4)(iii). In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). Further, in determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iv) *Anti-abuse rule.* Trades between persons described in section 267(b) (as modified in paragraph (d)(4)(iii)(B) of this section) and trades conducted in order to meet the requirements of paragraph (d)(4)(i)(B) of this section shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(4)(i)(B) of this section if there is a pattern of trades conducted to meet the requirements of that paragraph. For example, trades between two persons that occur several times during the taxable year my be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(4)(i)(B) of this section.

(5) *Burden of proof for publicly-traded corporations.* A foreign corporation that relies on this paragraph (d) to establish that it is a qualified resident of a country with which the United States has an income tax treaty shall have the burden of proving all the facts necessary for the corporation to be treated as a qualified resident, except that with respect to paragraphs (d)(4) (iii) and (iv) of this section, a foreign corporation, with either registered or bearer shares, will meet the burden of proof if it has no reason to know and no actual knowledge of facts that would cause the corporation's stock not to be treated as regularly traded under such paragraphs. A foreign corporation that has shareholders of record must also maintain a list of such shareholders and, on request, make available to the District Director such list and any other relevant information known to the foreign corporation.

(e) *Active trade or business*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country with respect to any U.S. trade or business if, during the taxable year—

(i) It is engaged in the active conduct of a trade or business (as defined in paragraph (e)(2) of this section) in its country of residence;

(ii) It has a substantial presence (within the meaning of paragraph (e)(3) of this section) in its country of residence; and

(iii) Either—

(A) Such U.S. trade or business is an integral part (as defined in paragraph (e)(4) of this section) of an active trade or business conducted by the foreign corporation in its country of residence; or

(B) In the case of interest received by the foreign corporation for which a treaty exemption or rate reduction is claimed pursuant to § 1.884–4(b)(8)(ii), the interest is derived in connection with, or is incidental to, a trade or business described in paragraph (e)(1)(i) of this section.

A foreign corporation may determine whether it is a qualified resident under this paragraph (e) by applying the rules of this paragraph (e) to the entire affiliated group (as defined in section 1504 (a) without regard to section 1504(b) (2) or (3)) of which the foreign corporation is a member rather than to the foreign corporation separately. If a foreign corporation chooses to apply the rules of this paragraph (e) to its entire affiliated group as provided in the preceding sentence, then it must apply such rules consistently to all of its U.S. trades or businesses conducted during the taxable year.

(2) *Active conduct of a trade or business.* A foreign corporation is engaged in the active conduct of a trade or business only if either—

(i) It is engaged in the active conduct of a trade or business within the meaning of section 367(a)(3) and the regulations thereunder; or

(ii) It qualifies as a banking or financing institution under the laws of the foreign country of which it is a resident, it is licensed to do business with residents of its country of residence, and it is engaged in the active conduct of a banking, financing, or similar business within the meaning of § 1.864–4(c)(5)(i) in its country of residence.

A foreign corporation that is an insurance company within the meaning of § 1.801–3 (a) or (b) is engaged in the active conduct of a trade or business only if it is predominantly engaged in the active conduct of an insurance business within the meaning of section 952(c)(1)(B)(v) and the regulations thereunder.

(3) *Substantial presence test*—(i) *General rule.* Except as provided in paragraph (e)(3)(ii) of this section, a foreign corporation that is engaged in the active conduct of a trade or business in its country of residence has a substantial presence in that country if, for the taxable year, the average of the following three ratios exceeds 25 percent and each ratio is at least equal to 20 percent—

(A) The ratio of the value of the assets of the foreign corporation used or held for use in the active conduct of a trade or business in its country of residence at the close of the taxable year to the value of all assets of the foreign corporation at the close of the taxable year;

(B) The ratio of gross income from the active conduct of the foreign corporation's trade or business in its country of residence that is derived from sources within such country for the taxable year to the worldwide gross income of the foreign corporation for the taxable year; and

(C) The ratio of the payroll expenses in the foreign corporation's country of residence for the taxable year to the foreign corporation's worldwide payroll expenses for the taxable year.

(ii) *Special rules*—(A) *Asset ratio.* For purposes of paragraph (e)(3)(i)(A) of this section, the value of an asset shall be determined using the method used by the taxpayer in keeping its books for purposes of financial reporting in its country of residence. An asset shall be treated as used or held for use in a foreign corporation's trade or business if it meets the requirements of § 1.367(a)–2T(b)(5). Stock held by a foreign corporation shall not be treated as an asset of the foreign corporation for purposes of paragraph (e)(3)i)(A) of this section if the foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote. The rules of § 1.954–2T(b)—(3) (other than § 1.954–2T(b)(3)(x)) shall apply to determine the location of assets used or held for use in a trade or business. Loans originated or acquired in the course of the normal customer loan activities of a banking, financing or similar institution, and securities and derivative financial instruments held by dealers, traders and insurance companies for use in a trade or business shall be treated as located in the country in which an office or other fixed place of business is primarily responsible for the acquisition of the

asset and the realization of income, gain or loss with respect to the asset.

(B) *Gross income ratio—(1) General rule.* For purposes of paragraph (e)(3)(i)(B) of this section, the term "gross income" means the gross income of a foreign corporation for purposes of financial reporting in its country of residence. Gross income shall not include, however, dividends, interest, rent, or royalties unless such corporation derives such dividends, interest, rents, or royalties in the active conduct of its trade or business. Gross income shall also not include gain from the disposition of stock if the foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote. Except as provided in this paragraph (e)(3)(ii)(B), the principles of sections 861 through 865 shall apply to determine the amount of gross income of a foreign corporation derived within its country of residence.

(2) *Banks, dealers and traders.* Dividend income and gain from the sale of securities, or from entering into or disposing of derivative financial instruments by dealers and traders in such securities or derivative financial instruments shall be treated as derived within the country where the assets are located under paragraph (e)(3)(ii)(A) of this section. Other income, including interest and fees, earned in the active conduct of a banking, financing or similar business shall be treated as derived within the country where the payor of such interest or other income resides. For purposes of the preceding sentence, if a branch or similar establishment outside the country in which the payor resides makes a payment of interest or other income, such amounts shall be treated as derived within the country in which the branch or similar establishment is located.

(3) *Insurance companies.* The gross income of a foreign insurance company shall include only gross premiums received by the country.

(4) *Other corporations.* Gross income from the performance of services, including transportation services, shall be treated as derived within the country of residence of the person for whom the services are performed. Gross income from the sale of property by a foreign corporation shall be treated as derived within the country in which the purchaser resides.

(5) *Anti-abuse rule.* The Commissioner may disregard the source of income from a transaction determined under this paragraph (e)(3)(ii)(B) if it is determined that one of the principal purposes of the transaction was to increase the source of income derived within the country of residence of the foreign corporation for purposes of this section.

(C) *Payroll ratio.* For purposes of paragraph (e)(3)(i)(C) of this section, the payroll expenses of a foreign corporation shall include expenses for "leased employees" (within the meaning of section 414(n)(2) but without regard to subdivision (B) of that section) and commission expenses paid to employees and agents for services performed for or on behalf of the corporation. Payroll expense for an employee, agent or a "leased employee" shall be treated as incurred where the employee, agent or "leased employee" performs services on behalf of the corporation.

(iii) *Exception to gross income test for foreign corporations engaged in certain trades or businesses.* In determining whether a foreign corporation engaged primarily in selling tangible property or in manufacturing, producing, growing, or extracting tangible property has a substantial presence in its country of residence for purposes of paragraph (e)(3)(i) of this section, the foreign corporation may apply the ratio provided in this paragraph (e)(3)(iii) instead of the ratio described in paragraph (e)(i)(B) of this section (relating to the ratio of gross income derived from its country of residence). This ratio shall be the ratio of the direct material costs of the foreign corporation with respect to tangible property manufactured, produced, grown, or extracted in the foreign corporation's country of residence to the total direct material costs of the foreign corporation.

(4) *Integral part of an active trade or business in a foreign corporation's country of residence*—(i) *In general.* A U.S. trade or business of a foreign corporation is an integral part of an active trade or business conducted by a foreign corporation in its country of residence if the active trade or business conducted by the foreign corporation in both its country of residence and in the United States comprise, in principal part, complementary and mutually interdependent steps in the United States and its country of residence in the production and sale or lease of goods or in the provision of services. Subject to the presumption and de minimis rule in paragraphs (e)(4) (iii) and (iv) of this section, if a U.S. trade or business of a foreign corporation sells goods that are not, in principal part, manufactured, produced, grown, or extracted by the foreign corporation in its country of residence, such business shall not be treated as an integral part of an active trade or business conducted in the foreign corporation's country of residence unless the foreign corporation takes physical possession of the goods in a warehouse or other storage facility that is located in its country of residence and in which goods of such type are normally stored prior to sale to customers in such country.

(ii) *Presumption for banks.* A U.S. trade or business of a foreign corporation that is described in § 1.884–4(b)(2) shall be presumed to be an integral part of an active banking business conducted by the foreign corporation in its country of residence provided that a substantial part of the business of the foreign corporation in its country of residence consists of receiving deposits and making loans and making loans and discounts.

(iii) *Presumption if business principally conducted in country of residence.* A U.S. trade or business of a foreign corporation shall be treated as an integral part of an active trade or business of a foreign corporation in its country or residence with respect to the sale or lease of property (or the performance of services) if at least 50 percent of the foreign corporation's worldwide gross income from the sale or lease of property of the type sold in the United States (or from the performance of services of the type performed in the United States) is derived from the sale or lease of such property for consumption, use, or disposition in the foreign corporation's country of residence (or from the performance of such services in the foreign corporation's country of residence). In determining whether property or services are of the same type, a foreign corporation shall follow recognized industry or trade usage or the three-digit major groups (or any narrower classification) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President. The determination of whether income is of the same kind must be made in a consistent manner from year-to-year.

(iv) *De minimis rule.* If a foreign corporation is engaged in more than on U.S. trade or business and if at least 80 percent of the sum of the ECEP from the current year and the preceding two years is attributable to one or more trades or businesses that meet the integral part test of this paragraph (e)(4), all of the U.S. trades or businesses of the foreign corporation shall be treated as an integral part of an active or business conducted by the foreign corporation. If a foreign corporation has more than one U.S. trade or business and does not meet the requirements of the preceding

sentence but otherwise meets the requirements of this paragraph (e)(4) with regard to one or more trade or business, see § 1.884–1(g)(1) to determine the extent to which treaty benefits apply to such corporation.

(f) *Qualified resident ruling*—(1) *Basis for ruling.* In his or her sole discretion, the Commissioner may rule that a foreign corporation is a qualified resident of its country or residence if the Commissioner determines that individuals who are not residents of the foreign country of which the foreign corporation is a resident do not use the treaty between that country and the United States in a manner inconsistent with the purposes of section 884. The purposes of section 884 include, but are not limited to, the prevention of treaty shopping by an individual with respect to any article of an income tax treaty between the country of residence of the foreign corporation and the United States.

(2) *Factors.* In order to make this determination, the Commissioner may take into account the following factors, including, but not limited to:

(i) The business reasons for establishing and maintaining the foreign corporation in its country of residence;

(ii) The date of incorporation of the foreign corporation in relation to the date that an income tax treaty between the United States and the foreign corporation's country of residence entered into force;

(iii) The continuity of the historical business and ownership of the foreign corporation;

(iv) The extent to which the foreign corporation meets the requirements of one or more of the tests described in paragraphs (b) through (e) of this section;

(v) The extent to which the U.S. trade or business is dependent on capital, assets, or personnel of the foreign trade or business;

(vi) The extent to which the foreign corporation receives special tax benefits in its country of residence;

(vii) Whether the foreign corporation is a member of an affiliated group (as defined in section 1504(a) without regard to section 1504(b) (2) or (3)), that has no members resident outside the country of residence of the foreign corporation; and

(viii) The extent to which the foreign corporation would be entitled to comparable treaty benefits with respect to all articles of an income tax treaty that would apply to that corporation if it had been incorporated in the country or countries of residence of the majority of its shareholders. For purposes of the preceding sentence, shareholders taken into account shall generally be limited to persons described in paragraph (b)(1)(i) of this section but for the fact that they are not residents of the foreign corporation's country of residence.

(3) *Procedural requirements.* A request for a ruling under this paragraph (f) must be submitted on or before the due date (including extensions) of the foreign corporation's income tax return for the taxable year for which the ruling is requested. A foreign corporation receiving a ruling will be treated as a qualified resident of its country of residence for the taxable year for which the ruling is requested and for the succeeding two taxable years. If there is a material change in any fact that formed the basis of the ruling, such as the ownership or the nature of the trade or business of the foreign corporation, the foreign corporation must notify the Secretary within 90 days of such change and submit a new private letter ruling request. The Commissioner will then rule whether the change affects the foreign corporation's status as a qualified resident, and such ruling will be valid for the taxable year in which the material change occurred and the two succeeding taxable years, subject to the requirement in the preceding sentence to notify the Commissioner of a material change.

(g) *Effective dates.* This section is effective for taxable years beginning on or after October 13, 1992. With respect to a taxable year beginning before October 13, 1992 and after December 31, 1986, a foreign corporation may elect to apply this section in lieu of the temporary regulations under 1.884–5T (as contained in the CFR edition revised as of April 1, 1992), but only if the statute of limitations for assessment of a deficiency has not expired for that taxable year. Once an election has been made, an election shall apply to all subsequent taxable years.

(h) *Transition rule.* If a foreign corporation elects to apply this section in lieu of § 1.884–5T (as contained in the CFR edition revised as of April 1, 1992) as provided in paragraph (g) of this section, and the application of paragraph (b) of this section results in additional documentation requirements in order for the foreign corporation to be treated as a qualified resident, the foreign corporation must obtain the documentation required under that paragraph on or before March 11, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by removing the entries for "1.884–0T, 1.884–1T, and 1.884–5T" and adding the following entries to the table:

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.884–0	1545–1070
1.884–1	1545–1070
* * * * *	
1.884–4	1545–1070
1.884–5	1545–1070
* * * * *	

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: July 30, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–21297 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678 ("the Act"). Although many of the revisions are technical and clarifying in nature, this document also contains several significant changes to Commission practice and procedure. For example, the Commission has eliminated fact pleading and instituted notice pleading at the complaint and answer stage. The Commission has also made substantial revisions to its rules on simplified proceedings, including the elimination of the right of any party to wield an absolute veto over the use of simplified proceedings by merely filing an objection. Under the new rules, the judge decides whether the objecting party has established that use of simplified proceedings would be inappropriate.

The Commission is also adopting certain changes in its discovery procedures. The new rules permit parties to file documents through facsimile transmission (or "FAX"), and

they formalize the rules governing all appearances before the Commission.

DATES: These revised rules will take effect on December 10, 1992. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work injustice, in which event the present rules apply.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 634–4015.

SUPPLEMENTARY INFORMATION: On May 12, 1992, the Occupational Safety and Health Review Commission published in the **Federal Register** a proposal to adopt substantial revisions to its Rules of Procedure (57 FR 20220). The notice fully explained the procedures followed by the Commission in developing its proposal and the basis and purpose of the proposed rules. The notice included a request for public comment.

In response, a number of organizations and individuals who would be affected by the revised rules filed comments with the Commission. The Office of the Solicitor of Labor, which represents the Secretary of Labor in all adjudicative proceedings before the Commission, filed comments on behalf of the Secretary of Labor. The Administrative Law Judges ("Judges") in the Commission's four area offices also filed their comments. The following groups and individuals, listed alphabetically, also presented substantial comments on the proposed revisions to the rules: The Administrative Conference of the United States; the Dallas, Texas, Chapter of the Associated General Contractors of America; Eastern Contractors Association, Inc.; Eiberger, Stacy, Smith & Martin; the General Building Contractors Association; Hughes & Luce; Jones, Day, Reavis & Pogue; Professor Morrell E. Mullins; Organization Resources Counselors, Inc.; Phillips Petroleum Company; Rader, Smith, Campbell & Fisher; Reed, Smith, Shaw & McClay; Texaco, Inc.; and the United Steelworkers of America, AFL–CIO/CLC. The Commission gratefully acknowledges receipt of these comments and assures the commentators that their concerns about the proposed changes were fully considered, even where they are not specifically mentioned here.

Among the comments received were suggestions for changing Commission rules, or portions thereof, that were not among those for which the Commission proposed revisions on May 12, 1992. While the Commission will not address these unsolicited comments in the document here, they may be considered for future action.

In developing the final rules set forth in this document, the Commission considered not only the concerns of the commentators above, but also the suggestions of individual Commission members. The Commission also held a meeting on Tuesday, August 25, 1992, that was open for public attendance under the Government in the Sunshine Act, 5 U.S.C. 552b. After careful deliberation, the Commission has voted to make a number of changes to its procedural rules, including some changes to the proposed revisions. While some changes urged by the commentators were incorporated in the final rules, others were deemed unnecessary or inappropriate.

The Commission considers its notice-and-comment rulemaking to be an appropriate procedure for the revision of these selected rules. However, the Solicitor of Labor disagrees and would have the Commission follow the suggestion contained in the report of Professor Morrell Mullins that provides: "To the extent feasible and allowable under applicable law, future major OSHRC rulemakings on simplified proceedings should be preceded by some form of advisory committee studies. Or, 'negotiated rulemaking' might be considered." Mullins, The Use of Settlement Judges and Simplified Proceedings in Enforcement Actions Before the Occupational Safety and Health Review Commission (Report to the Administrative Conference of the United States) (September 1990), p. 79. We note that this suggestion, which addressed only simplified proceedings, recognized that the Commission should only proceed "[t]o the extent feasible" in its rulemaking methods. While the Commission recognizes that negotiated rulemaking has its merits, the Commission's resources have prevented it from using such procedures with regard to these revisions of the rules.

After careful consideration of all comments received, the Commission issues these final rules, amending its rules of procedure, in order to promote more effective and efficient proceedings before the Commission and its Judges, while maintaining fairness to all participants.

Rule 4 Computation of Time

Few comments were received on the proposed revisions to paragraphs (a) and (b) of this rule, and the proposed new paragraph (c). These changes were primarily for clarification. The Commission adopts the proposed revisions to paragraph (a) and new paragraph (c). With regard to paragraph (b), the Commission adopts the proposed revisions and, in response to comments, adds clarifying language regarding the relationship between the 3-day mail period and the actual response period.

Rule 5 Extensions of Time

The proposed rule required that, except in "exigent circumstances," all motions for extensions of time be made: (1) In writing; and (2) before the expiration of the time deadline. The present Commission rule at § 2200.5 already provides that a party may make an oral motion for extension of time, if followed by a written motion, in "exigent circumstances." The proposed change would require the written motion to follow within 3 working days. The other proposed change was to permit a motion to be filed after the designated time to file has expired only in "exigent circumstances." This was a change from the present rule, which permits late-filed motions for good cause. Several commentators objected to the "exigent circumstances" standard on the grounds that it was too vague and potentially too strict. The Commission disagrees with the vagueness argument and suggests that "exigent" has been defined as "urgent; critical" and "requiring more than is reasonable." See "Webster's New World Dictionary" 491, senses 1 & 2 (2d college ed. 1972). By intended contrast, the less strict "good cause" standard contained in the first sentence of this rule applies to consideration of motions for extension of time that are in writing and timely. The Commission believes that the "exigent circumstances" standard, already used in § 2200.5 for oral motions for extensions of time and in § 2200.40 for telephonic, general motions and requests, is the best way of discouraging the practice of requesting extensions of time after the time period has expired.

Rule 7 Service and Notice

The Commission proposed adding a sentence to paragraph (a) to clarify that "[e]very order required by its terms to be served shall be served upon each of the parties and intervenors." The proposal did not provoke substantial comment, and it is adopted.

The Commission also proposed amending paragraph (c) by requiring that, for service to be effective, a party need be served only at its last known address. As the Commission stated in its proposal, by explicitly limiting the obligation of the serving party to serve other parties only at their last known address, the amendment will, in effect,

provide a sanction for failure to comply with § 2200.6, which imposes a duty on the parties to keep the Commission informed of their current address. No objections to this amendment were received, and it is adopted. Also, the Commission proposed to make a further revision to paragraph (c) by making facsimile transmission (or "FAX") equivalent to personal delivery. Several commentators suggested that the Commission extend this amendment to overnight delivery services. Their suggestions are well taken. Therefore, paragraph (c) is further amended to explicitly state that service by an overnight delivery service is considered personal service and thus effective upon receipt by the party being served.

Rule 8 Filing

The Commission proposed revising § 2200.8 by redesignating paragraphs (a) through (d) as (b) through (e) and adding new paragraph (a) to clarify that all papers served on a party or intervenor, except those associated with a discovery request, shall be filed with the Commission shortly after service. One commentator suggested that the new paragraph (a) is unnecessary. The Commission disagrees. One of the purposes of the paragraph is to stress that discovery requests shall ordinarily not be served on the Commission or the Judge. The Commission finds that the proposed rule adequately conveys this intent, and the Commission adopts the change as proposed.

Another comment received suggested that the Commission amend proposed paragraph (e) to state that documents sent by an overnight delivery service are filed when received. The Commission finds substantial merit in light of the similar change that has been adopted as part of the service requirements of § 2200.7(c). Paragraph (e) is therefore revised to adopt the suggestion.

The Commission also proposed to add paragraph (f) setting forth the rules governing the facsimile transmission of documents. The suggestion was supported by the commentators and is adopted as proposed.

Rule 10 Severance

The purpose of this amendment is to clarify that the burden of showing good cause for severing a proceeding is upon the party or intervenor seeking severance. The proposed language received little comment, and it is adopted with one change, the substitution of "claims" for "issues" in the last phrase of the rule. This change recognizes, as one commentator suggested, that cases before the Commission are severed by claims, i.e., citations or citation items, not by issues within those claims.

Rule 20 Party Status

The proposed revision to paragraph (a) is grammatical and does not significantly alter the meaning of the rule. There were no comments on the proposal, and it is adopted.

Rule 24 Brief of an Amicus Curiae

The Commission proposed a new rule to explicitly set forth the requirements for an *amicus curiae* desiring to file a brief before the Commission or the Judge. Under the proposed rule, the brief of an *amicus curiae* may only be filed by leave of the Commission or Judge. The motion must identify the interest of the applicant and state the reasons why such a brief would be desirable. Unless the Commission or Judge, for good cause shown, allows a later filing, the brief must be filed within the period allowed the party whose position the brief will support.

The proposal received little comment, and it is adopted.

Rule 30 General Rules

The Commission proposed to redesignate paragraphs (d) through (g) as paragraphs (e) through (h) and to add a new paragraph (d) explicitly permitting adoption by reference of statements in different pleadings, in other parts of the same pleading, or in any motion. There were no comments on the proposal, and it is adopted.

Rule 32 Signing of Pleadings and Motions

The Commission proposed adding a provision to this rule making it explicit that a party is in violation of this section and subject to default as set forth in § 2200.41 if the party signs a document that, to the party's best knowledge and belief, is not well grounded in fact and law, or is interposed for an improper purpose. One commentator suggested that the rule reference § 2200.104, the rule on attorney discipline. The Commission finds the suggestion to be of merit because, in some instances, it would be unfair to penalize a party for the unethical practices of its attorney. The additional reference to § 2200.104 gives the Commission the flexibility needed to deal with such a situation.

Rule 34 Notice Pleading

The commentators were generally supportive of the Commission's proposal to return to notice pleading. One commentator, however, did express concern that the lack of factual detail in notice pleading puts the employer at a disadvantage that can only be cured through expensive discovery procedures. Fact pleading, this commentator noted, requires the Secretary of Labor to plead facts relevant to the case that would otherwise remain unknown to the employer. While the Commission is sympathetic to this problem, experience has shown that fact pleading does little to reduce the need for discovery. In most instances, the relevant details set forth in fact pleading are already known to the employer or are readily determined through discovery that would take place even with fact pleading. In the time the Commission has been operating under fact pleading, the Commission has found that the benefits have not justified the burden it places on the time and resources of the Secretary of Labor.

While most of the commentators supported the Commission's return to notice pleading, there was widespread opposition to the reduction in the time allowed for the filing of the initial pleadings. Several commentators objected to the discrepancy between the proposed time allowed the Secretary of Labor to file the complaint (20 days) and that allowed the employer for the filing of its answer (15 days). The Commission agrees with the commentators that this difference, though based on the burdens imposed on the parties by the requirements of the initial pleadings, does give the appearance of unfairness to the employer. Therefore, the Commission has equalized the time periods and will allow both parties 20 days to file their initial pleadings.

Some commentators expressed the opinion that once initial pleadings are filed, there is a reduced incentive to settle a case. Therefore, a reduction in the time for filing initial pleadings would cause a parallel reduction in the time available for settlement negotiations and lead to fewer settlements. The Commission disagrees. Although the Commission questions the premise that fact pleading, in and of itself, led to more settlements, it believes that any increase in settlements resulting from fact pleading would stem not from the longer time periods for filing, but rather from the burdens imposed by fact pleading. Since the small burden imposed on the parties by notice pleading would provide little inducement to settle, a shortened time frame should have no effect on the settlement rate.

Other commentators argued that the shortened filing periods would place an undue burden on the parties. The Commission disagrees. The time periods originally proposed were the same as those that existed previously, when the

Commission operated under notice pleading. During that time, practitioners before the Commission had little problem meeting the filing deadlines then in effect. The Commission finds nothing to justify maintaining the current filing periods which were extended to compensate for the substantial additional burdens placed on the parties when the Commission adopted fact pleading. The Commission has every reason to expect that the Commission's Judges will continue their practice of granting a party's motion for an extension of time to file a complaint or answer in those instances where circumstances justify such extensions.

One commentator suggested that paragraph (b)(3), which requires that affirmative defenses be pleaded in the answer, be further amended to list a more inclusive inventory of affirmative defenses. The Commission disagrees. The few defenses contained in the proposal were chosen for two reasons. First, the affirmative defenses listed are those most commonly pleaded in Commission proceedings. Second, the names of the affirmative defenses included in the proposal largely defined what the defenses are about, thus making it clearer to the *pro se* employer what types of matters must be pleaded in the answer. In our view, to expand the list further to include such matters as "preemption" would heighten the possibility of it being seen as an exclusive listing and would tend only to confuse the *pro se* litigant.

Several commentators suggested that paragraph (b)(4), which informs the parties that the failure to raise an affirmative defense in the answer may result in the party being prohibited from raising it later in the proceedings, was unnecessary because the matter is covered under Federal Rule of Civil Procedure 15(a). While this is true, the Commission believes that these basic pleading requirements are of sufficient importance to include in the Commission's own rules. It must be stressed that in the early stages of pleading, many employers have yet to retain legal counsel and rely instead on the initial packet of information they receive containing the Commission's rules of procedure. Because of their complexity, and because many of the Federal Rules are preempted by the Commission's own rules, copies of the Federal Rules of Civil Procedure are not included. It is, therefore, of the utmost importance that the Commission's rules be sufficiently comprehensive to inform the parties of their procedural rights and obligations and of the penalties they could incur for failure to follow the rules.

The Commission has made a minor wording revision to the proposed paragraph (b)(4). The original proposal would prohibit a party from raising an affirmative defense not raised in the answer unless the Judge finds that the party asserted the defense "as early as possible." The Commission believes that this phrase is unnecessarily vague and fails to give adequate guidance to either the parties or the Judge. Therefore, the Commission has substituted the phrase "as soon as practicable." This change is more in keeping with standard legal terminology and gives the parties clearer notice of what must be shown to justify a late-filed affirmative defense.

Rule 35 Disclosure of Corporate Parents, Subsidiaries, and Affiliates

The Commission proposed to add, as new § 2200.35, a rule that comprehensively addresses corporate disclosure requirements. The proposed rule extends the requirement of a corporate disclosure filing, that already must be included in the answer, to petitions for modifications to abate or other initial filings. Under the proposed rule, a party must notify the Commission and its Judges of the identity of all parents, subsidiaries, and corporate affiliates in its answer, petition for modification of abatement, or other initial filing. As the present rule regarding the content of the answer requires, a party has a "continuing duty" to notify the Commission of any change in its corporate status, subsidiaries, or affiliates. The Commission rejects one comment in favor of only periodic reporting because a periodic duty to disclose could create substantial periods of time between the development of a financial interest, due to a takeover or other change in corporate ownership, and the reporting of that development to the Judge or the Commission. A continuing duty to disclose would either eliminate or substantially reduce this time period and thus afford the Judge or the Commission adequate information to avoid conflicts of interest.

Rule 40 Motions and Requests

The Commission proposed to tighten paragraph (a) of the rule by requiring that motions made telephonically be put in writing as soon as possible, but no later than 3 working days following the time the motion was made. The proposed rule also would retain the current language prohibiting motions from being made in other documents, such as briefs.

Rule 50 Proposed Mandatory Interrogatories and Consultation

This proposal would have required all parties to answer certain mandatory interrogatories after all the filing of the initial pleadings. The purpose of these mandatory interrogatories was to have the parties exchange information central to the case as early as possible.

Several commentators felt that mandatory interrogatories would enhance the fairness of the proceedings to employers by minimizing any advantage the Secretary might otherwise obtain through her investigative resources. While other commentators agreed with the philosophy underlying the concept, most found fault with either the mandatory nature of the interrogatories proposed, the time frames involved, or the burdens the interrogatories would impose on the parties, especially *pro se* employers. Several commentators opined that the practical effect of mandatory interrogatories was merely to postpone fact pleading into the discovery process. Strong opposition was also voiced by the Commission's Judges, who believed that the rule would lead to additional delay and erode the Judge's discretion in handling the case.

Having reviewed these comments, the Commission has decided not to require mandatory interrogatories at this time. The Commission, however, will closely monitor how successful the return to notice pleading will be to ensure that the parties are provided, at the early stages of the proceedings, with sufficient information to enable them to effectively proceed with their case. The Commission is particularly concerned with the imbalance of information that tends to exist at the early stages between the Secretary of Labor and the employer. Should notice pleading exacerbate this problem, the Commission will reexamine the viability of imposing mandatory interrogatories or otherwise amending its rules.

Rule 51 Prehearing Conferences and Orders

The Commission proposed to revise this section by adding a new paragraph (a) to require the Judge to hold a scheduling conference and enter a scheduling order that limits the time (1) to join other parties and to amend the pleadings, (2) to file and hear motions, and (3) to complete discovery. The scheduling order could also include: (1) the date or dates for conferences before hearing, a final prehearing conference, and hearing; and (2) any matters

appropriate to the circumstances of the case.

The commentators largely supported the concept of scheduling conferences, but were opposed to having them made mandatory. The Commission has examined these objections and has decided to retain the provision as mandatory. It has been brought to the Commission's attention that courts that have imposed a scheduling conference requirement have found it to be an effective method of accelerating the processing of cases. The Commission continues to believe that the schedules derived from the scheduling conference will encouarge the parties to keep the case moving at a reasonable pace and avoid needless delay and inaction.

Paragraph (b), the proposed rule on prehearing conferences, engendered little comment, and it is adopted as proposed. This rule explicitly adopts the prehearing procedures set forth in Rule 16 of the Federal Rules of Civil Procedure and allows the Judge, upon his own initiative or on the motion of a party, to direct the parties to confer among themselves to consider settlement, stipulation of facts, or any other matter that may expedite the hearing. Although not required, the Judge would not be prohibited from requiring the parties to submit an agreed prehearing order where the Judge, in his discretion, finds it appropriate.

Rule 52 General Provisions Governing Discovery

The Commission proposed to amend paragraph (d), its discovery rule on protective orders, by (1) requiring that the party seeking the protective order make a showing of good cause and (2) expanding the types of protective orders available. The current rule expressly states several justifications for a protective order: annoyance, embarrassment, oppression, or undue burden or expense. By replacing this list with a requirement that good cause be shown, the Commission intends to grant the Judge more flexibility in determining when a protective order is warranted. The expansion of the list of available protective orders should, similarly, increase the flexibility of the Judge in formulating a proper order. As with the current rule, however, the list is illustrative, not exclusive. Few comments were received addressing this proposed rule, with one commentator preferring maintenance of the current list of justifications. In the Commission's opinion, requiring a showing of "good cause" to obtain a protective order grants proper discretion to the Judge while adequately protecting the interests of the parties.

The Commission also proposed adding a paragraph (h) that set a specific time frame for prehearing discovery. The commentators unanimously objected to the time limits as too arbitrary and unrealistic. The Commission finds much merit in these objections. Because the Commission is making the scheduling conference mandatory, the Commission has found it adequate to leave the time frames for discovery to the discretion of the Judge.

Having eliminated the proposed paragraph (h), proposed paragraphs (i)–(m) have been redesignated (h)–(l). For example, redesignated paragraph (h) is the provision adopting Rule 26(e)(1)–(3) of the Federal Rules of Civil Procedure, requiring supplementation of responses to discovery requests. Redesignated paragraphs (h)–(l) received little comment, and their text is adopted as proposed, with a few changes. In paragraph (k), "issue" is changed to "claim" for clarity, as in § 2200.10, discussed above. Paragraph (l), as proposed, provided for "use on appeal." As one commentator observed, there remained some uncertainty as to whether the reference in the original proposal to "appeal" referred to appeal to the Commission or the Federal circuit courts. The wording of the paragraph has been modified from the proposal to clarify that the rule applies in either case, "on review or appeal."

Rule 53 Production of Documents and Things

This rule sets forth the procedures for requesting and the obligations for producing documents and other things during discovery. The proposed revisions address the possibility of a longer time for response where allowed by the requesting party. There was general support for the rule, and it is adopted as proposed.

Rule 56 Depositions

The Commission proposed adding paragraph (f) to § 2200.56 to set forth procedures for offering depositions at the hearing. No comments were received taking issue with the substantive provisions of this proposed paragraph. Paragraph (f) is therefore adopted as proposed.

To facilitate the use of depositions, and to reduce the expense to the parties, the Commission proposed adding paragraph (g) to § 2200.56 to allow the parties to take depositions by telephone. Comments received were generally supportive of adding paragraph (g), and it is adopted as proposed.

The Commission also proposed adding paragraph (h) to § 2200.56 to allow the taking of video depositions. The videotaped deposition would be simultaneously recorded by a qualified court reporter. The Commission rejects one comment that parties should be able to use the videotape itself as the official record. Because of the possibility of damage to the videotape, it cannot be relied upon as the official record of the deposition. A written transcript is therefore necessary. The Commission adopts the rule as proposed.

The Commission proposed paragraphs (h)(2)–(7) regarding the requirements for videotape recording. No comments were received taking issue with the substantive provisions of paragraphs (h)(2)–(7) of this rule, and they are adopted as proposed.

Proposed paragraph (h)(8) requires that the original of the videotape recording, together with the operator's log index and a certificate of the operator attesting to the accuracy of the tape, be filed with the Executive Secretary of the Commission. The Commission changes this proposed language, for clarification, by: (1) adding that the transcript also must be filed; and (2) substituting "the Judge" for the "Executive Secretary of the Commission" as the recipient of the filing. One commentator noted that there is no need to file a deposition of any kind with the Executive Secretary unless it is used at the hearing. The Commission agrees with this comment and responds by adding the qualification "[i]f a videotaped deposition is used at the hearing."

Requests for prehearing rulings on the admissibility of evidence obtained during a videotaped deposition would be required to be accompanied by appropriate pages of the written transcript under proposed paragraph (h)(9). No comments were received on this paragraph, and it is adopted as proposed.

Proposed paragraph (h)(10) requires that if only portions of the tape are to be used at the hearing, the parties must designate the parts to be included, and the offering party must prepare a version of the tape edited to allow continuous playback. One commentator argued that, because videotape machines have counters, the admissible portions of the tape can be found without trouble. This comment does not take into account that the counter on one tape machine may not correspond to the counter of another tape machine. The Commission adopts the proposed rule.

Concerning depositions in general, one commentator urged that employers should be able to take depositions as of right. The Commission rejects this

suggestion because it would cause undue delay and otherwise burden the adjudication of cases.

Rule 57 Issuance of Subpenas; Petitions to Revoke or Modify Subpenas; Right to Inspect or Copy Data

The Commission proposed a technical amendment to § 2200.57(a) to make it permissible, but not mandatory, to issue warrants ex parte. No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 63 Stay of Proceedings

The Commission proposed to amend paragraph (c) by requiring that the length of time between the requisite periodic reports filed by the parties in stayed cases be no longer than 90 days, unless the Commission or the Judge directs otherwise. No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 64 Failure to Appear

The Commission proposed to amend paragraph (c) by explicitly stating that the hearing be rescheduled as expeditiously as possible. No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 93 Briefs Before the Commission

The Commission proposed to amend paragraph (c) to provide that a motion for extension of time must be filed "within three days prior to" the expiration of the time period for filing the brief. For clarity, the Commission has modified the language to require that any motion for extension of time be filed "no later than 3 days prior to" the expiration of the time period for filing the brief. One commentator asserted that emergencies can occur at the last minute, preventing the filing of the motion no later than 3 days prior to the expiration date. The Commission notes, however, that under § 2200.107, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive this rule as justice or the administration of the Act requires. The Commission therefore adopts the proposed language as modified.

The Commission also proposed adding paragraph (i) to the section explicitly permitting a party who has been granted the status of amicus curiae to file a brief. An amicus will not, however, be allowed to file a reply brief. A commentator asserted that there should not be an outright ban on reply briefs by an amicus curiae. As mentioned above, under § 2200.107, the Commission or Judge may waive this prohibition on amicus reply briefs as justice or the administration of the Act requires. The Commission therefore adopts the proposed language.

Rule 95 Oral Argument Before the Commission

The Commission proposed to amend paragraph (a) by explicitly informing all parties that motions for oral argument shall not be considered until after all briefs have been filed. No substantial comments were received on this proposal, and the proposed language is adopted.

The Commission proposed to add a sentence to paragraph (g) requiring that, within 10 days of the date of the scheduled argument, parties who are represented by multiple counsel inform the Commission of the name of the counsel who will argue. A commentator noted that counsel often does not know who will argue within 10 days of argument, and proposed allowing counsel to notify the Commission, by telephone, on the day before the argument. The Commission changes the sentence to paragraph (g) requiring that, no later than 3 days before the date of the scheduled argument, the Commission must be notified of the names of the counsel who will argue. The Commission notes, however, that under § 2200.107, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive this rule as justice or the administration the Act requires. The Commission therefore adopts the proposed language, modified by a few clarifying word changes.

The Commission would also add new paragraph (j) that would prohibit a party who has not filed a brief from being heard at oral argument, except by permission of the Commission. No substantial comments were received on this proposal, and the proposed language is adopted.

Finally, the Commission proposed to add new paragraph (k) that would set forth rules allowing oral argument by an amicus curiae. No substantial comments were received on this portion of the proposed rule, and the proposed language is adopted.

Rule 100 Settlement

The Commission proposed to revise paragraph (c) to add the phrase "or posting" to the requisite 10-day waiting period between the settlement and the order terminating the litigation before the Commission. The pertinent part of the paragraph is revised to read: "an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting" to consider objections to the reasonableness of the abatement period.

Rule 107 Special Circumstances; Waiver of Rules

The Commission proposed to amend § 2200.107 to clarify the time period, after notice has been given and before the Commission or Judge can issue a waiver of the rules, as 3 "working" days. No substantial comments were received on this proposal, and the proposed language is adopted.

Simplified Proceedings

General Comments

The Commission first proposed amending its rules on simplified proceedings on February 18, 1987. 52 FR 4017. However, the Commission was unable to take official action on those proposed amendments due to lack of a quorum. Nevertheless, the Commission continues to recognize the merits of the 1987 proposed amendments and used them as the bases for the proposed amendments to the rules on simplified proceedings that were issued on May 12, 1992. 57 FR 20220, 20223.

The purpose of simplified proceedings is to facilitate the resolution of the many simple cases that constitute a significant portion of the caseload of the Commission's Judges. Many of these simple cases involve employers who are appearing *pro se* and would benefit significantly from these abridged procedures. As was noted in the preamble to the proposed revisions, 57 FR 20223 (May 12, 1992), simplified proceedings probably have been underutilized and their purpose not realized as a result of the automatic veto that a party, often the Secretary, has been permitted to effect, under present Commission rules, by filing an objection to institution of such proceedings in a case.

To address this problem, the Commission proposed that the rules be revised to eliminate a party's ability to unilaterally veto institution of simplified proceedings in a case by merely filing a timely objection. The proposed revisions to § 2200.203(b)(3) provided that a party could still object in writing to simplified proceedings, but it would have to show that it would "suffer prejudice" in the presentation of its case. Under the corresponding proposed language for § 2200.203(d), the Judge would then rule on whether the objecting party has

established prejudice, and, if it has not made that showing, the Judge would order the use of simplified proceedings. The Commission proposed making corresponding revisions to §§ 2200.201 (application) and 2200.204 (discontinuance).

Many comments, discussed more fully below, were received on these proposed changes. Several commentators expressed their views that "prejudice" was too stringent a burden upon the objecting party. Upon reconsideration of the proposed test, the Commission recognizes these concerns and, as set forth below in this document, adopts language in § 2200.203(b)(3) that requires the objecting party to show that simplified proceedings would be "inappropriate," instead of prejudicial. The Commission likewise amends § 2200.203 to provide that the Judge must determine whether an objecting party has shown that simplified proceedings would be "inappropriate." Corresponding changes in §§ 2200.201 and 2200.204 are adopted as well.

The Commission will monitor the use and effectiveness of these revised rules on simplified proceedings and may issue further revisions as appropriate in the future.

Rule 200 Purpose

The Commission proposed to restate the second goal of simplified proceedings set forth in paragraph (a) as "assuring due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554." No substantial comments were received on this proposal, and the proposed language is adopted.

Rule 201 Application

Under the proposed rule, the Chief Administrative Law Judge or the Judge to whom a case is assigned could overrule a party's objections, filed pursuant to § 2200.203(b), and approve a challenged request for simplified proceedings. As discussed more fully in the comments on § 2200.203(b) below, an objection to institution of simplified proceedings no longer has the effect of a unilateral veto.

Rule 202 Eligibility for Simplified Proceedings

The proposed changes would update the rule to reflect the Secretary's adoption of new occupational health standards in subpart Z of part 1910. A significant change that was proposed was the elimination of the outright prohibition of cases brought under section 5(a)(1) of the Act, 29 U.S.C. 654(a)(1), the Act's "general duty clause." There were no substantial comments received on these proposed changes, and they are adopted, with the exception of a technical change to one item in the list: "§§ 1910.1000 through 1910.1101."

One Commission member pointed out that there have been some cases involving one or more of the listed standards where only the penalty was contested. The Commission agrees that the use of simplified proceedings could prove very effective in such penalty cases, as well as in cases where other issues not concerned with the merits of the alleged violations of one of the listed standards are the only matters for adjudication. Therefore, the Commission hereby adds language to the rule that permits cases involving one of the listed standards to be eligible for simplified proceedings where the merits of the alleged violations are not at issue, and specifically where the penalty alone is contested. These changes also address the concern of one commentator that the eligibility rule has not considered the "suitability" of cases.

Rule 203 Commencing Simplified Proceedings (Requests and Objections)

The proposed rule included a new clause in paragraph (a)(2) that permits late-filed requests for good cause shown. No comments focussed on this particular clause, or on the other slight wording changes in that sentence. Therefore, the Commission adopts that proposed language.

The proposed change to paragraph (a)(3) is to add the sentence specifying that the request for simplified proceedings must be in writing. No comments were received regarding this proposed change or on the proposed separate listing of the parties to be served. The Commission adopts these proposed changes.

The proposed rule provides in paragraph (b)(2) that a party can object within 10 days after the request for simplified proceedings has been served. The 5-day reduction in time from that allowed by the present rule was not the subject of any comment, and the proposed rule is adopted by the Commission.

The Commission proposed that § 2200.203(b)(3) be revised to provide that a party can take issue with implementation of simplified proceedings by filing an objection in writing that explains why simplified proceedings would be prejudicial to presentation of its case. As noted above, the Commission appreciates the concern of the commentators who criticized prejudice as too heavy a burden. The Commission therefore votes to adopt language that requires: "The objection must be stated in writing and explain why, under the particular circumstances of the case, simplified proceedings would be "inappropriate." A clear example of "inappropriateness" would be where simplified proceedings would deny due process. Simplified proceedings could also be "inappropriate" where a party will introduce complex expert testimony or where a third party is involved.

Proposed language for new section 2200.203(b)(4) provides that where no objection has been filed, the Commission will notify all parties that simplified proceedings are in effect. No comments were received on this specific new provision, and it is adopted as proposed.

The Commission proposed in § 2200.203(c) that any party be permitted to file a statement of position within 10 days after service of an objection to simplified proceedings. No specific comments were received on this provision. The Commission adopts the proposed revision with a slight change in verb tense.

The proposed revision of § 2200.203(d) generated considerable comments, including the concern that, as with § 2200.203(b)(3), the requirement upon the objecting party to show prejudice is too strict. The Commission appreciates that concern and votes to change the rule such that the standard of proof is whether simplified proceedings would be "inappropriate" rather than "prejudicial." In addition, the Commission revises the proposed language to include the requirement that the Judge's ruling on a party's objection to simplified proceedings be in writing. The rule, as amended, now reads: "The Judge shall set forth in writing his reasons for his ruling on a party's objection to simplified proceedings. If the Judge concludes that the objecting party has shown that, under the particular circumstances of the case, simplified proceedings would be inappropriate, the Judge shall order that the case be conducted under conventional rules." Examples of where simplified proceedings would be "inappropriate" are discussed above regarding § 2200.203(b)(3). In response to several comments, the Commission reiterates the prohibition on interlocutory review in simplified proceedings. The Commission also notes that, where a party might suffer a denial of due process by the Judge's ruling on its objection to simplified proceedings, that party may seek a discontinuance of simplified proceedings under § 2200.204 and, after the Judge has rendered his

decision, relief from the Commission on review.

The proposed revision contained in § 2200.203(e), stating how the time for filing a complaint or answer interacts with the use or discontinuance of simplified proceedings, was not the subject of comment. The proposed paragraph is therefore adopted.

Rule 204 Discontinuance of Simplified Proceedings

The Commission proposed revising § 2200.204 to provide that "[a]t any time, but no later than thirty days before the hearing" the Judge may on his own motion or that of a party discontinue simplified proceedings. One commentator took issue with the time limitation, noting that it is sometimes only during the 30-day period preceding the hearing that facts become known that would support discontinuance of simplified proceedings. In response to that comment, the Commission revises the rule to provide that the Judge, upon his own or a party's motion, may discontinue simplified proceedings "at any time."

The proposed rule stated that "[a] motion to discontinue must be in writing and explain why, under the particular circumstances of the case, the moving party would be prejudiced in the presentation of its case by continuing under simplified proceedings." As noted above with regard to §§ 2200.203(b)(3) and 2200.203(d), commentators have taken exception to the heavy burden of showing "prejudice." As was done for those rules, the Commission revises § 2200.204 to require that the party moving for discontinuance of simplified proceedings show that simplified proceedings would be "inappropriate" under the particular circumstances of the case. This rule is further revised to clarify that, when ruling on his own or a party's written motion, the Judge must state in writing his reasons for finding simplified proceedings to be "inappropriate." The Commission also added a sentence stating that interlocutory review is not available to appeal orders granting or denying a discontinuance. The Commission adopts the above changes and combines the proposed paragraphs (a) and (b), with revisions, for clarity.

Rule 205 Filing of Pleadings

The Commission proposed making only technical changes to this rule to coordinate with the redesignated numbers of the referenced Commission rules on complaints, responses to petitions, and responses to employee contests. No comments were received on this rule, and it is adopted as proposed.

Rule 207 Conference/Hearing

As noted in the preamble to its proposed revisions, the Commission anticipates that the conference/hearing will be an important, cost-effective feature of simplified proceedings. To clarify a point raised by one commentator regarding the earlier preamble, the parties are required by § 2200.206 to discuss between themselves specific matters within a reasonable time before the conference/hearing. The Judge would then hold the conference and enter into the record any agreements reached and defenses raised during the discussions under § 2200.206. After attempting to resolve the remaining issues, the Judge would at the conclusion of the conference enter into the record any further agreements reached by the parties.

The proposed revisions included a technical change to correct the reference to another Commission rule in paragraph (b). It was also proposed that paragraph (c) be revised to provide: "The hearing shall be in accordance with Subpart E of these rules." The Commission further proposed amending subparagraph (c)(1) to add: "physical" evidence to the oral and documentary evidence already included; and "unreliable" to the irrelevant and unduly repetitious evidence that may be excluded. The proposed revision to subparagraph (c)(2) only involved moving phrases within the second sentence. No comments were received with regard to these proposed revisions, and they are adopted.

Rule 209 Decision of the Judge, Petition to Commission

The Commission proposed revising § 2200.209 to provide: "Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After issuance of the Judge's decision, the case shall proceed in the conventional manner prescribed in Subpart F." These revisions are clarifying in nature. There were no comments received on these proposed changes, and they are adopted.

Rule 210 Discovery

One of the major objections to simplified proceedings has been that, except were ordered by the Judge, discovery has not been permitted. To address this concern in an effort to encourage use of simplified proceedings, the Commission proposed revising § 2200.210 to provide: "Discovery, including requests for admissions, shall not be allowed except under the conditions and time limits set by the Judge." While discovery would continue to be allowed only through the Judge, the Judge's role would become more supervisory, by his setting the conditions and time limits. The Commission expects that by expressly granting to the Judge the authority to control the conditions and duration of discovery, the parties should find it easier to obtain the discovery needed for their cases. Some commentators expressed concern that this revision did not sufficiently liberalize discovery. The Commission notes that where difficulties in discovery under this rule might arise, there may be grounds for requesting discontinuance of simplified proceedings. The Commission adopts the proposed revision.

Rule 212 Applicability of Subparts A through G

The Commission proposed, and explained the need to make, several additions and deletions to the list of rules that do not apply to simplified proceedings. No substantial comments were received on these proposed changes, and the revisions are adopted.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

Text of Amendment

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends title 29, chapter XX, part 2200 of the Code of Federal Regulations as follows:

PART 2200—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.4 is revised to read as follows:

§ 2200.4 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 11 days, the period shall commence on the first day which is not a Saturday, Sunday, or Federal holiday, and intermediate Saturdays, Sundays, and

Federal holidays shall likewise be excluded from the computation.

(b) *Service by mail.* Where service of a document, including documents issued by the Commission or Judge, is made by mail pursuant to § 2200.7, a separate period of 3 days shall be allowed, in addition to the prescribed period, for the filing of a response. This additional 3-day period shall commence on the calendar day following the day on which service has been made and shall include all calendar days; that is, paragraph (a) of this section shall not apply to the extent it requires the exclusion of Saturdays, Sundays, or Federal holidays. The prescribed period for the responsive filing shall commence on the first day following the expiration of the 3-day period, except when the prescribed period is less than 11 days. Where the period is less than 11 days, it shall commence on the first day following the expiration of the 3-day period that is not a Saturday, Sunday, or Federal holiday.

(c) *Exclusion.* Paragraph (b) of this section does not apply to petitions for discretionary review. The period of time for filing a petition for discretionary review is governed by § 2200.91(b).

3. Section 2200.5 is revised to read as follows:

§ 2200.5 Extension of time.

Upon motion of a party, for good cause shown, the Commission or Judge may enlarge any time prescribed by these rules or prescribed by an order. All such motions shall be in writing but, in exigent circumstances in a case pending before a Judge, an oral request may be made and thereafter shall be followed by a written motion filed with the Judge within 3 working days. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, in exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

4. Section 2200.7 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2200.7 Service and notice.

(a) *When service is required.* At the time of filing pleadings or other documents, a copy thereof shall be served by the filing party or intervenor on every other party or intervenor. Every paper relating to discovery required to be served on a party shall be served on all parties and intervenors. Every order required by its terms to be served shall be served upon each of the parties and intervenors.

* * * * *

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail at the last known address or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery). Facsimile transmission of documents and documents sent by an overnight delivery service shall be considered personal delivery. Legibility of documents served by facsimile transmission is the responsibility of the serving party.

* * * * *

5. Section 2200.8 is revised to read as follows:

§ 2200.8 Filing.

(a) *What to file.* All papers required to be served on a party or intervenor, except for those papers associated with part of a discovery request under Rules 52 through 56, shall be filed either before service or within a reasonable time thereafter.

(b) *Where to file.* Prior to assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(c) *How to file.* Unless otherwise ordered, all filing may be accomplished by postage-prepaid first class mail or by personal delivery.

(d) *Number of copies.* Unless otherwise ordered or stated in this part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and four copies of a document shall be filed.

(e) *Filing date.* Filing is effective upon mailing (if by mail) or upon receipt by the Commission (if filing is by personal delivery, overnight delivery service, or facsimile transmission), except that the filing of petitions for discretionary review is effective only upon receipt by the Commission. See § 2200.91.

(f) *Facsimile transmissions.* (1) Any document may be filed with the Commission or its Judges by facsimile transmission. Filing shall be deemed completed at the time that the facsimile transmission is received by the Commission or the Judge. The filed facsimile shall have the same force and effect as the original.

(2) All facsimile transmissions shall include a facsimile of the appropriate certificate of service.

(3) Within 3 days after the Commission or the Judge has received the facsimile, the party filing the document shall forward to the Commission or the Judge a signed, original document and, where appropriate, the proper number of multiple copies.

(4) It is the responsibility of parties desiring to file documents by the use of facsimile transmission equipment to utilize equipment that is compatible with facsimile transmission equipment operated by the Commission. Legibility of the transmitted documents is the responsibility of the serving party.

6. Section 2200.10 revised to read as follows:

§ 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, where a showing of good cause has been made by the party or intervenor, the Commission or the Judge may order any proceeding severed with respect to some or all claims or parties.

7. Section 2200.20 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 2200.20 Party status.

(a) *Affected employees.* Affected employees and authorized employee representatives may elect party status concerning any matter in which the Act confers a right to participate. The election shall be accomplished by filing a written notice of election at least 10 days before the hearing. * * *

* * * * *

8. Section 2200.24 is added to subpart B to read as follows:

§ 2200.24 Brief of an amicus curiae.

The brief of an amicus curiae may be filed only by leave of the Judge or Commission. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support unless the Judge or

Commission, for good cause shown, grants leave for later filing. In that event, the Judge or Commission shall specify within what period an opposing party may answer.

9. Section 2200.30 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h) and adding a new paragraph (d) to read as follows:

§ 2200.30 General rules.

* * * * *

(d) *Adoption by reference.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(e) *Alternative pleading.* A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of their consistency or the grounds on which based. All statements shall be made subject to the signature requirements of § 2200.32.

(f) *Content of motions and miscellaneous pleadings.* A motion shall contain a caption complying with § 2200.31, a signature complying with § 2200.32, and a clear and plain statement of the relief that is sought together with the grounds therefor. These requirements also apply to any pleading not governed by more specific requirements in this subpart.

(g) *Burden of persuasion.* The rules of pleading established by this subpart are not determinative in deciding which party bears the burden of persuasion on an issue. By pleading a matter affirmatively, a party does not waive its right to argue that the burden of persuasion on the matter is on another party.

(h) *Enforcement of pleading rules.* The Commission or the Judge may refuse for filing any pleading or motion that does not comply with the requirements of this subpart.

10. Section 2200.32 is amended by adding a sentence to the end of the section to read as follows:

§ 2200.32 Signing of pleadings and motions.

* * * If a pleading, motion or other paper is signed in violation of this rule, such signing party or its representative shall be subject to the sanctions set forth in § 2200.41 or § 2200.104.

11. Section 2200.34 is revised to read as follows:

§ 2200.34 Employer contests.

(a) *Complaint.* (1) The Secretary shall file a complaint with the Commission no later than 20 days after receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

(i) The basis for jurisdiction;

(ii) The time, location, place, and circumstances of each such alleged violation; and

(iii) The considerations upon which the period for abatement and the proposed penalty of each such alleged violation are based.

(3) Where the Secretary seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) *Answer.* (1) Within 20 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

(3) The answer shall include all affirmative defenses being asserted. Such affirmative defenses include, but are not limited to, "infeasibility," "unpreventable employee misconduct," and "greater hazard."

(4) The failure to raise an affirmative defense in the answer may result in the party being prohibited from raising the defense at a later stage in the proceeding, unless the Judge finds that the party has asserted the defense as soon as practicable.

12. Section 2200.35 is revised to read as follows:

§ 2200.35 Disclosure of corporate parents, subsidiaries, and affiliates.

(a) *General.* All answers, petitions for modification of abatement period, or other initial pleadings filed under these rules by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable.

(b) *Failure to disclose.* The Commission or Judge in its discretion may refuse to accept for filing an answer or other initial pleading that lacks the disclosure declaration required by this paragraph. A party that fails to file an adequate declaration may be held in default after being given an opportunity to show cause why it should not be held in default.

(c) *Continuing duty to disclose.* A party subject to the disclosure requirement of this paragraph has a continuing duty to notify the Commission or the Judge of any change in the information on the disclosure declaration until the Commission issues a final order disposing of the proceeding.

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (b) of this section shall be served upon the affected party by certified mail, return receipt requested.

§ 2200.36 [Reserved]

13. Section 2200.36 is removed and reserved.

14. Section 2200.40 is amended by revising paragraph (a) to read as follows:

§ 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to writing and filed as soon as possible but no later than 3 working days following the time the motion was made. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all parties, the moving party shall state in the motion any opposition or lack of opposition of which he is aware.

* * * * *

§ 2200.50 [Reserved]

15. Section 2200.50 is reserved.

16. Section 2200.51 is revised to read as follows:

§ 2200.51 Prehearing conferences and orders.

(a) *Scheduling conference.* (1) The Judge shall consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30

days after the filing of the answer, enter a scheduling order that limits the time:

(i) To join other parties and to amend the pleadings;

(ii) To file and hear motions; and

(iii) To complete discovery.

(2) The scheduling order also may include:

(i) The date or dates for conferences before hearing, a final prehearing conference, and hearing; and

(ii) Any other matters appropriate to the circumstances of the case.

(b) *Prehearing conference.* In addition to the prehearing procedures set forth in Rule 16 of the Federal Rules of Civil Procedure, the Judge may upon his own initiative or on the motion of a party direct the parties to confer among themselves to consider settlement, stipulation of facts, or any other matter that may expedite the hearing.

17. Section 2200.52 is amended by revising paragraph (d) and adding paragraphs (h)–(l) to read as follows:

§ 2200.52 General provisions governing discovery.

* * * * *

(d) *Protective orders.* In connection with any discovery procedures and where a showing of good cause has been made, the Commission or Judge may make any order including, but not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the Commission or Judge;

(6) That a deposition after being sealed be opened only by order of the Commission or Judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or Judge.

* * * * *

(h) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (i) The identity and location of persons having knowledge of discoverable matters and (ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) The party knows that the response was incorrect when made of (ii) The party that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

(i) *Filing of discovery.* Requests for production or inspection under Rule 53, requests for admission under Rule 54 and responses thereto, interrogatories under Rule 55 and the answers thereto, and depositions under Rule 56 shall be served upon other counsel or parties, but shall not be filed with the Commission or the Judge. The party responsible for service of the discovery material shall retain the original and become the custodian.

(j) *Relief from discovery requests.* If relief is sought under Rules 41 or 52 (d), (e), or (f) concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers, or responses in dispute shall be filed with the Judge or Commission contemporaneously with any motion filed under Rules 41 or 52 (d), (e), or (f).

(k) *Use at hearing.* If interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion which might result in a final order on any claim, the portions to be used shall be filed with the Judge or the Commission at the outset of the hearing or at the filing of the motion insofar as their use can be reasonably anticipated.

(l) *Use on review or appeal.* When documentation of discovery not previously in the record is needed for review or appeal purposes, upon an application and order of the Judge or Commission the necessary discovery papers shall be filed with the Executive Secretary of the Commission.

18. Section 2200.53 is amended by revising paragraph (b) to read as follows:

§ 2200.53 Production of documents and things.

* * * * *

(b) *Procedure.* The request shall set forth the items to be inspected, either by individual item or by category and describe each item and category with reasonable particularity. It shall specify a reasonable time, place and manner of making the inspection and performing related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request, unless the requesting party allows a longer time. The Commission or Judge may allow a shorter time or a longer time, should the requesting party deny an extension. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, the requesting party shall file a motion with the Judge and shall annex thereto his request, together with the response and objections, if any.

19. Section 2200.56 is amended by adding paragraphs (f)–(h) to read as follows:

§ 2200.56 Depositions.

* * * * *

(f) *Excerpts from depositions to be offered at hearing.* Except when used for purposes of impeachment, at least 5 working days prior to the hearing, the parties or counsel shall furnish to the Judge and all opposing parties or counsel the excerpts from depositions (by page and line number) which they expect to introduce at the hearing. Four working days thereafter, the adverse party or counsel for the adverse party shall furnish to the Judge and all opposing parties or counsel additional excerpts from the depositions (by page and line number) which they expect to be read pursuant to Rule 32(a)(4) of the Federal Rules of Civil Procedure, as well as any objections (by page and line number) to opposing party's or counsel's depositions. With reasonable notice to the Judge and all parties or counsel, other excerpts may be read.

(g) *Telephone depositions.* (1) Telephone depositions may be

conducted pursuant to Rule 30(b)(7) of the Federal Rules of Civil Procedure.

(2) If a party objects to a telephone deposition, he shall make known his objections at least 5 days prior to the taking of the deposition. If the objection is not resolved by the parties or the Judge before the scheduled deposition date, the deposition shall be stayed pending resolution of the dispute.

(h) *Video depositions.* By indicating in its notice of a deposition that it wishes to record the deposition by videotape (and identifying the proposed videotape operator), a party shall be deemed to have moved for such an order under Rule 30(b)(4) of the Federal Rules of Civil Procedure. Unless an objection is filed and served within 10 days after such notice is received, the Judge shall be deemed to have granted the motion pursuant to the following terms and conditions:

(1) *Stenographic recording.* The videotaped deposition shall be simultaneously recorded stenographically by a qualified court reporter. The court reporter shall administer the oath or affirmation to the deponents on camera. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Rule 30(e) (submission to witness) of the Federal Rules of Civil Procedure.

(2) *Cost.* The noticing party shall bear the expense of both the videotaping and the stenographic recording. Any party may at its own expense obtain a copy of the videotape and the stenographic transcript.

(3) *Video operator.* The operator(s) of the videotape recording equipment shall be subject to the provisions of Rule 28(c) of the Federal Rules of Civil Procedure. At the commencement of the deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

(4) *Attendance.* Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped. Identification on camera of each witness, attorney, and other person attending the deposition may be waived by the attorneys for the parties.

(5) *Standards.* The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a hearing. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

(6) *Interruptions.* Videotape recording will be suspended during all "off the record" discussions.

(7) *Index.* The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends; at which objections are made and examination resumes; at which exhibits are identified; and at which any interruption of continuous tape recording occurs, whether for recesses, "off the record" discussions, mechanical failure, or otherwise.

(8) *Filing.* If a videotaped deposition is used at the hearing, the original of the videotape recording, together with the transcript, the operator's log index, and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the Judge. No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the Commission or the Judge.

(9) *Objections.* Requests for prehearing rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the Commission or Judge.

(10) *Use at hearing; purged tapes.* A party desiring to offer a videotape deposition at the hearing shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by all parties of the portions of a videotape to be used at the hearing, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), must be prepared by the offering party to facilitate continuous playback; but a copy of the edited tape shall be made available to other parties at least 10 days before it is used, and the unedited original of the tape shall also be available at the hearing.

20. Section 2200.57 is amended by revising paragraph (a) to read as follows:

§ 2200.57 Issuance of subpenas; petitions to revoke or modify subpenas; right to inspect or copy data.

(a) *Issuance of subpenas.* On behalf of the Commission or any member thereof, the Judge shall, on the application of any party, issue to the applying party subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. The party to whom the subpena is issued shall be responsible for its service. Applications for subpenas, if filed prior to the assignment of the case to a Judge, shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, DC 20006. After the case has been assigned to a Judge, applications shall be filed with the Judge. Applications for subpena(s) may be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

* * * * *

21. Section 2200.63 is amended by revising paragraph (c) to read as follows:

§ 2200.63 Stay of proceedings.

* * * * *

(c) *Periodic reports required.* The parties in a stayed proceeding shall be required to submit periodic reports on such terms and conditions as the Judge may direct. The length of time between the reports shall be no longer than 90 days unless the Commission or the Judge otherwise orders.

22. Section 2200.64 is amended by revising paragraph (c) to read as follows:

§ 2200.64 Failure to appear.

* * * * *

(c) *Rescheduling hearing.* The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled as expeditiously as possible from the issuance of the Judge's order.

23. Section 2200.93 is amended by revising paragraph 9(c) and adding paragraph (i) to read as follows:

§ 2200.93 Briefs before the Commission.

* * * * *

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed at the Commission no later than 3 days prior to the expiration of the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40 and shall include the following information: When the brief is due, the number and duration of extensions of time that have been granted to each party, the length of extension being requested, the specific reason for the extension being requested, and an assurance that the brief will be filed within the time extension requested.

* * * * *

(i) *Brief of an amicus curiae.* The Commission may allow a brief of an amicus curiae pursuant to the criteria of § 2200.24. Any brief of an amicus curiae must meet the requirements of paragraphs (b) through (h) of this section. No reply brief of an amicus curiae will be received.

24. Section 2200.95 is amended by revising paragraph (a)(1), by adding a sentence to the end of paragraph (g), and by adding paragraphs (j) and (k) to read as follows:

§ 2200.95 Oral argument before the Commission.

(a) *When ordered.* (1) Upon motion of any party, or upon its own motion, the Commission may order oral argument. Normally, motions for oral argument shall not be considered until after all briefs have been filed.

* * * * *

(g) *Multiple counsel.* * * * No later than 3 days prior to the date of scheduled argument, the Commission must be notified of the names of the counsel who will argue.

* * * * *

(j) *Failure to file brief.* A party who fails to file a brief shall not be heard at the time of oral argument except by permission of the Commission.

(k) *Participation in oral argument by amicus curiae.* (1) An amicus curiae will not be permitted to participate in oral argument without leave of the Commission upon proper motion.

(2) A motion by amicus curiae seeking leave to participate in oral argument shall be filed no later than 14 days prior to the date oral argument is scheduled.

(3) The motion of an amicus curiae for leave to participate at oral argument shall identify the interest of the applicant and shall state the reason(s) why its participation at oral argument is desirable.

(4) Motions in opposition to the motion of an amicus curiae for leave to participate in the oral argument must be filed within 7 days of the date of the motion.

25. Section 2200.100 is amended by revising paragraph (c) to read as follows:

§ 2200.100 Settlement.

* * * * *

(c) *Filing; service and notice.* A settlement submitted for approval after the Judge's report has been directed for review shall be filed with the Executive Secretary. When a settlement agreement is filed with the Judge or the Executive Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties and authorized employee representatives in the manner prescribed by § 2200.7(c) and the posting of notice to non-party affected employees in the manner prescribed by § 2200.7(g). The parties shall also file a final consent order for adoption by the Judge. If the time has not expired under these rules for electing party status, or if party status has been elected, an order terminating the litigation before the Commission because of the settlement shall not be issued until at least 10 days after service or posting to consider any affected employee's or authorized employee representative's objection to the reasonableness of any abatement time. The affected employee or authorized employee representative shall file any such objection within this time. If such objection is filed or stated in the settlement agreement, the Commission or the Judge shall provide an opportunity for the affected employees or authorized employee representative to be heard and present evidence on the objection, which shall be limited to the reasonableness of the abatement time.

* * * * *

26. Section 2200.107 is revised to read as follows:

§ 2200.107 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules and for good cause shown, the Commission or Judge may, upon application by any party or intervenor or on their own motion, after 3 working days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

27. Section 2200.200 is amended by revising paragraph (a) to read as follows:

§ 2200.200 Purpose.

(a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so the parties before the Commission may save time and expense while assuring due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. The rules shall be construed and applied to accomplish these ends.

* * * * *

28. Section 2200.201 is revised to read as follows:

§ 2200.201 Application.

The rules in this subpart shall govern proceedings before an Administrative Law Judge in a case eligible for simplified proceedings under § 2200.202 upon the request of a party and, if there is objection, the approval of the Chief Administrative Law Judge or such other Judge to whom he has assigned the case.

29. Section 2200.202 is revised to read as follows:

§ 2200.202 Eligibility for simplified proceedings.

All cases in which only the penalty is contested shall be eligible for simplified proceedings. In all other instances, a case is eligible for simplified proceedings unless it concerns the merits of an alleged violation of a standard listed below:

§ 1910.94
§ 1910.95
§ 1910.96
§ 1910.97
§ 1910.1000 through 1910.1101
§ 1926.52
§ 1926.53
§ 1926.54
§ 1926.55
§ 1926.57
§ 1926.800(c) and

any occupational health standard that may be added to Subpart Z of Part 1910. (All standards listed are found in title 29 of the Code of Federal Regulations.)

30. Section 2200.203 is amended by revising paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (b)(4), (c) and (d), by removing paragraph (a)(4), and by adding paragraph (e) as follows:

§ 2200.203 Commencing simplified proceedings.

(a) * * *

(2) *When to request.* After the Commission receives an employer's or employee's notice of contest or petition for modification of abatement, the Executive Secretary shall issue a notice indicating that the case has been docketed. Any request for simplified

proceedings shall be filed within 10 days after the notice of docketing is received, unless the notice of docketing states otherwise; a late-filed request may be considered only if good cause for the filing is shown.

(3) *How to request.* A simple statement is all that is necessary. For example, "I request simplified proceedings" will suffice. The request shall be in writing. The request shall be filed with the Executive Secretary and served on all of the following:

(i) The employer;

(ii) The Secretary of Labor; and

(iii) Any authorized employee representatives.

The request also shall be posted for the benefit of any unrepresented affected employees. (To serve the Secretary of Labor, the request should be mailed to the Regional Solicitor named in the notice of docketing.)

(b) * * *

(2) *When to object.* An objection shall be filed within 10 days after the request for simplified proceedings is served.

(3) *How to object.* The objection must be stated in writing and explain why, under the particular circumstances of the case, simplified proceedings would be inappropriate. An objection shall be filed with the Executive Secretary and served in the manner prescribed for requests for simplified proceedings in paragraph (a)(3) of this section.

(4) *No objection filed.* When the period for objecting to simplified proceedings expires and no objection has been filed, the Commission shall notify all parties that simplified proceedings are in effect.

(c) *Statements of position.* Any party may, within 10 days after an objection to simplified proceedings has been served, file with the Executive Secretary a statement of position on the objection.

(d) *Judge's ruling on objection.* The Judge shall set forth in writing his reasons for his ruling on a party's objection to simplified proceedings. If the Judge concludes that the objecting party has shown that, under the particular circumstances of the case, simplified proceedings would be inappropriate, the Judge shall order that the case be conducted under conventional rules. Otherwise, the Judge shall order the use of simplified proceedings. The order granting or denying the request shall not be subject to interlocutory review.

(e) *Time for filing complaint or answer under § 2200.34.* The times for filing a complaint or answer shall not run if a request for simplified proceedings is filed. If the Commission later notifies the parties under § 2200.203(d) that the case is to continue under conventional procedures, the periods for filing a complaint or answer shall begin upon receipt of the notice.

31. Section 2200.204 is revised to read as follows:

§ 2200.204 Discontinuance of simplified proceedings.

At any time, on his own motion or the written motion of a party, the Judge to whom the case has been assigned may discontinue simplified proceedings. A party's motion to discontinue must be in writing and explain why, under the particular circumstances of the case, it would be inappropriate to continue under simplified proceedings. All other parties shall have 5 days from the date of the motion to state their position on the motion and the reasons therefor. In response to his own motion or the written motion of a party, the Judge must set forth in writing his reasons for his ruling on whether simplified proceedings are inappropriate. Simplified proceedings shall be discontinued if all parties consent. If simplified proceedings are terminated, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules. The order discontinuing simplified proceedings or denying a motion for discontinuance shall not be subject to interlocutory review.

32. Section 2200.205 is amended by revising paragraph (a) as follows:

§ 2200.205 Filing of pleadings.

(a) *Complaint and answer.* There shall be no complaint or answer in simplified proceedings. If the Secretary has filed a complaint under § 2200.34(a), a response to a petition under § 2200.37, or a response to an employee contest under § 2200.38, and simplified proceedings have been ordered or a motion for simplified proceedings is pending, no response to these documents shall be required.

* * * * *

33. Section 2200.207 is amended by revising paragraphs (b) and (c) as follows:

§ 2200.207 Conference/Hearing.

* * * * *

(b) *Conference.* At the beginning of the conference, the Judge shall enter into the record all agreements reached by the parties as well as defenses raised during the discussion set forth in § 2200.206. The parties and the Judge then shall attempt to resolve or narrow the remaining issues. At the conclusion of the conference, the Judge shall enter into the record any further agreements reached by the parties.

(c) *Hearing.* The Judge shall hold a hearing on any issue that remains in dispute at the conclusion of the conference. The hearing shall be in accordance with subpart E of these rules.

(1) *Evidence.* Oral, physical, or documentary evidence shall be received, but the Judge may exclude irrelevant, unduly repetitious or unreliable evidence. Testimony shall be given under oath or affirmation. The Federal Rules of Evidence shall not apply.

(2) *Oral and written argument.* Each party may present oral argument at the close of the hearing. At the conference/hearing, any party wishing to present written argument shall notify the Judge and all other parties so that the Judge may set a reasonable period for the prompt filing of written argument.

34. Section 2200.209 is amended by revising paragraph (b) to read as follows:

§ 2200.209 Decision of the Judge.

* * * * *

(b) Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's decision, the case shall proceed in the conventional manner prescribed in subpart F.

35. Section 2200.210 is revised to read as follows:

§ 2200.210 Discovery.

Discovery, including requests for admissions, shall not be allowed except under the conditions and time limits set by the Judge.

36. Section 2200.212 is revised to read as follows:

§ 2200.212 Applicability of subparts A through G.

The provisions of subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, and 2200.73 shall not apply to simplified proceedings. All other rules contained in subparts A through G of the Commission's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.

Dated: September 4, 1992.

Edwin G. Foulke, Jr.,

Chairman.

Dated: September 4, 1992.

Donald G. Wiseman,

Commissioner.

Dated: September 4, 1992.

Velma Montoya,

Commissioner.

[FR Doc. 92-21871 Filed 9-10-92; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 58 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the termination and possible reassertion of regulatory jurisdiction over all or part of a reclaimed goal mine following the release of performance bond.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated November 17, 1989 (Administrative Record Number OH-1240), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio), of a number of Federal regulations promulgated between September 7, 1988, and November 8, 1988, for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. One new Federal rule at 30 CFR 700.11(d) concerned the termination of regulatory jurisdiction over reclaimed mines.

In response to the OSM notification, Ohio submitted proposed Program Amendment Number 43 by letter dated January 16, 1990 (Administrative Record No. OH-1265). In part, this amendment proposed the addition of two new paragraphs at Ohio Administrative Code (OAC) 1501:13-1-01(D)(1) and (2) to establish corresponding State provisions for the termination and possible reassertion of Ohio's regulatory jurisdiction over reclaimed mines.

On January 7, 1991, OSM sent its comments to Ohio on Program Amendment Number 43 (Administrative Record No. OH-1430). In those comments, OSM noted that the U.S. District Court for the District of Columbia remanded the counterpart Federal rule at 30 CFR 700.11(d) concerning termination of jurisdiction as contrary to SMCRA (*National Wildlife Federation* v. *Lujan*, Nos. 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, 89-0141 (D.D.C. August 30, 1990). OSM notified Ohio that OSM could not approve Ohio's proposed rules at OAC 1501:13-1-01(D) (1) and (2) because those provisions, as did the remanded counterpart Federal regulation at 30 CFR 700.11(d), permitted Ohio to conclude its role in enforcing SMCRA at the site of a surface mining activity when the operator has performed all of the required duties to reclaim the site. This proposed State provision would be contrary to the court's interpretation of SMCRA.

In response to OMS's letter, Ohio submitted Revised Program Amendment Number 43 on February 12, 1991 (Administrative Record Number OH-1454). In this revised amendment, Ohio deleted the previously proposed new rules on termination jurisdiction.

Subsequently, the Secretary of the Interior appealed the U.S. District Court's suspension of the Federal rule. On December 10, 1991, the U.S. Court of Appeals for the District of Columbia upheld the remanded Federal rule at 30 CFR 700.11(d). *National Wildlife Federal* v. *Lujan*, Nos. 90-5352, 90-5354, 90-5356, 90-5358, D.C. Cir. December 10, 1991.) On April 10, 1992 (57 FR 12461), OSM published the reinstatement of the remanded Federal rule as promulgated on November 2, 1988 (53 FR 44356). This reinstated rule became effective on May 11, 1992.

By letter dated May 12, 1992 (Administrative Record No. OH-1699), Ohio submitted proposed Program Amendment Number 58. This amendment resubmits the previously proposed State provisions for the termination and possible reassertion of regulatory jurisdiction over all or part of a reclaimed coal mine following the release of performance bond. Ohio is again proposing to add new paragraphs (D)(1) and (2) at OAC 1501:13-1-01.

OSM announced receipt of the proposed amendment in the June 22, 1992, Federal Register (57 FR 27718), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 22, 1992. The public hearing scheduled for July 17, 1992, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

Ohio is adding paragraph (D) to OAC 1501:13-1-01 to clarify the authority of the Chief of the Division of Reclamation, Ohio Department of Natural Resources (the Chief), to terminate jurisdiction over all or part of a reclaimed site in accordance with OAC Section 1501:13-7. A new provision is also being added requiring the Chief to reassert jurisdiction over a site if it is demonstrated that the release of bond was based on fraud, collusion, or misrepresentation of a material fact.

The Federal regulations at 30 CFR 700.11(d) authorize the regulatory authorities to terminate jurisdiction over reclaimed sites of completed surface coal mining and reclamation operations when, (1) under initial or permanent programs, all requirements under the respective program regulations have been successfully completed, or (2) under permanent programs the regulatory authority has made a final decision in accordance with the State's counterpart to 30 CFR Part 800 of the Federal regulations to release the performance bond fully. Ohio has proposed to adopt language in rule 1501:13-1-01 which will establish the complete release of bond as the single criterion for the termination of jurisdiction. In administrative record information submitted with this proposed amendment, Ohio explained its rationale for choosing a single criterion of bond release rather than two

criteria as in the counterpart Federal regulations. Ohio notes that Ohio's pre-SMCRA and interim regulatory programs have, both before and after enactment of SMCRA, consistently required the posting of bond and conditioned final bond release on the completion of all reclamation work. Since 30 CFR 710.4(b) requires that States enforce the Federal initial program regulations in Subchapter B of 30 CFR Chapter VII, and 30 CFR 720.12 requires that initial program permits be amended to include a condition requiring compliance with these performance standards, we find this explanation to be acceptable, provided the bond release includes a written determination that all regulatory requirements and permit conditions have been met. The Director acknowledges Ohio's rationale and notes that Ohio's bond release form requires the completion of all program requirements prior to final bond release. The Director finds, therefore, that the proposed rule is consistent with SMCRA and no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the June 22, 1992, **Federal Register** (57 FR 27718) closed on July 22, 1992. The Ohio Historic Preservation Office (OHPO) commented that they did not object to the proposed amendment. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Department of Agriculture, Soil Conservation Service, the U.S. Army Corps of Engineers, and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 58, as submitted by Ohio on May 12, 1992. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

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

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 1992.

Vann Weaver,

Acting Assistant Director, Eastern Support Center.

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

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

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

2. In § 935.15, a new paragraph (ggg) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ggg) The following amendment to the Ohio regulatory program, as submitted to OSM on May 12, 1992, is approved, effective September 11, 1992: Amendment Number 58 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13–1–01–(D) (1) and (2) which concern the termination and possible reassertion of regulatory jurisdiction over all or part of a

reclaimed coal mine following the release of performance bond.

[FR Doc. 92-21909 Filed 9-10-92 8:45 am]
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30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is approving, with one exception and additional requirement, a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed changes to the Utah Coal Mining Rules pertaining to the definition of "valid existing rights," areas designated as unsuitable for mining by act of Congress, permit application requirements for identification of interests, revegetation success standards, air quality, coal mine waste, thick overburden, sedimentation ponds, cross sections and maps, and termination of jurisdiction. Utah also proposed "Guidelines for Examining and Evaluating Violations, Penalties, and Fees Under R645-300-110," and revisions to the Vegetation Information Guidelines. The amendment revises the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 776-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions pertaining to Utah's program taken subsequent to the original approval are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated November 20, 1991 (administrative record No. UT-691), Utah submitted the proposed amendment to its regulatory program pursuant to SMCRA. Utah submitted the proposed amendment in response to required program amendments at 30 CFR 944.16(a) through (m) that OSM placed on the Utah program in the August 23, 1991, final rule **Federal Register** notice (56 FR 41795, administrative record No. UT-673) for Utah's July 3, 1990, proposed amendment. The provisions of the Utah Coal Mining Rules that Utah proposed to amend are: R645-100-200, definition of "valid existing rights;" R645-103-220, areas designated unsuitable for mining by act of Congress; R645-301-111.400, permit application requirements for identification of interests; R645-301-356.231, revegetation success standards; R645-301-425, air quality; R645-301-528.320, coal mine waste, R645-301-533.800, thick overburden; R645-301-742.224, sedimentation ponds; R645-301-512.140 and R645-301-731.750, cross sections and maps; and R645-100-400, termination of jurisdiction. In addition, Utah proposed "Guidelines for Examining and Evaluating Violations, Penalties, and Fees under R654-300-110" regarding improvidently issued permits, and revisions to the Vegetation Information Guidelines. (Please note that on January 1, 1992, Utah recodified the prefix of its Coal Mining Rules from R614 to R645. Above OSM cites the rules with the R645 prefix, but in the original December 5, 1991, proposed rule **Federal Register** notice (discussed below) OSM cited the rules with the R614 prefix.)

OSM announced receipt of the proposed amendment in the December 5, 1991, **Federal Register** (56 FR 63699) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (administrative record No. UT-697). The public comment period closed on January 6, 1992. The public hearing, scheduled for December 30, 1991, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Mining Rules at R645-100-400 through 452, termination of jurisdiction; the "Guidelines for Examining and Evaluating Violation, Penalties, Fees under R645-300-110;" and the Vegetation Information Guidelines. OSM notified Utah of the concerns by letter dated January 29, 1992 (administrative record No. UT-722). Utah submitted, by letter dated February 28, 1992, a revised amendment (administrative record No. UT-737).

OSM announced receipt of the revised amendment in a notice in the April 17, 1992, **Federal Register** (57 FR 13684; administrative record No. UT-745). In this notice, OSM reopened the public comment period. The reopened public comment period closed on May 4, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Utah on November 20, 1991, and revised by it on February 28, 1992.

1. Utah Program Provisions for Which the Director Required Program Amendments in the August 23, 1991, Final Rule **Federal Register** *Notice*

Utah submitted proposed revisions in response to required program amendments at 30 CFR 944.16(a) through (m) that OSM placed on the Utah program in the August 23, 1991, final rule **Federal Register** notice. As discussed below the Director finds that the proposed revisions to the Utah program are no less effective than the corresponding Federal regulations.

(a) Definition of "Valid Existing Rights," Rule R645-100-200

In response to the required amendment at 30 CFR 944.16(a) (finding No. 3(b); 56 FR 41795, 41796; August 23, 1991), Utah proposed to amend the definition of "valid existing rights" at rule R645-100-200 by removing the incomplete sentence "the prohibition caused by 40-10-24 of the Act" from subsection (c) of the definition, which pertains to the "needed for and adjacent" test. Utah's proposed deletion of the incomplete sentence from subsection (c) of the definition of "valid existing rights" at rule R645-100-200 is consistent with the corresponding Federal definition of "valid existing rights" at 30 CFR 761.5 as modified by the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Litigation*, 22 ERC 1557 and 2153 (D.D.C. March 22 and July 15, 1985)). Therefore, the Director approves the proposed revision and removes the required amendment at 30 CFR 944.16(a).

With respect to other valid existing rights requirements of the definition, the Director is taking this opportunity to make clear that, because Utah did not provide for a "takings" or a "good faith all permits" test, OSM determined in the

August 23, 1991, **Federal Register** notice (56 FR 41795, 41796) that Utah's definition of "valid existing rights" was no less effective than the Federal definition at 30 CFR 761.5.

(b) Areas Unsuitable for Coal Mining and Reclamation Operations, Rule R645–103–220

In response to the required amendment at 30 CFR 944.16(b) (finding No. 5; 56 FR 41795, 41797; August 23, 1991), Utah proposed to amend rule R645–103–220 to reference "section 523(a)" rather than "section 522(b)" of the Federal Act. Utah's proposed rule R645–103–220 is consistent with and no less stringent than section 523 of SMCRA and no less effective than the Federal regulations at 30 CFR Part 769. Therefore, the Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(b).

(c) Improvidently Issued Permits, and the February 28, 1992 "Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645–300–110"

In response to the required program amendment at 30 CFR 944.16(c) (finding No. 7; 56 FR 41795, 41797; August 23, 1991), Utah proposed revisions of the violations review criteria for improvidently issued permits in the "Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645–300–110," dated February 28, 1992.

Utah proposed an effective date of (1) August 23, 1991 (the date Utah adopted rules for improvidently issued permits), for civil penalties, notice of violations (NOV's), and ownership and control relationships; (2) July 5, 1984 (the date OSM published the final rule at 30 CFR 773.17(g) (49 FR 27493) making the payment of reclamation fees as required by 30 CFR Subchapter R a permit condition), for delinquent abandoned mine reclamation fees; and (3) January 21, 1981 (the date of Utah's original program approval), for air and water quality environmental violations, bond forfeitures, and cessation orders. The effective dates relate to when a permit was issued, not when the violation became unabated or the penalty or fee became delinquent, either of which may have occurred at any time prior to permit issuance.

The review criteria and their effective dates are consistent with the violations review criteria for 30 CFR 773.20 as set forth in the April 28, 1989, final rule **Federal Register** notice (54 FR 18438, 18440–18441). Therefore, the Director approves the proposed guidelines that supplement rule R645–300–110 and removes the required program amendment at 30 CFR 944.16(c).

(d) Permit Application Requirements for the Identification of Interests, Rule R645–301–111.400

In response to the required amendment at 30 CFR 944.16(d) (finding No. 8; 56 FR 41795, 41797; August 23, 1991), Utah proposed to amend rule R645–301–111.400 to require permit applicants to submit applicant violator system information in "the format prescribed by OSM rules governing the applicant violator system information needs." Because Utah's proposed rule refers to OSM's format prescribed by rules and OSM may prescribe a format by procedure or guidance document rather than rules, OSM interprets the word "rules" in the phrase "OSM rules governing the applicant violator system information needs" as encompassing guidelines or procedures. Based on this interpretation, Utah's proposed rule R645–301–111.400 is no less effective than the corresponding Federal regulation at 30 CFR 778.13(j). Therefore, the Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(d).

(e) Vegetation Success Standards, R645–301–356.231, and the February 1992 Vegetation Information Guidelines.

In response to required program amendments at 30 CFR 944.16 (e), (f), (g), and (h), Utah proposed to revise rule R645–301–356.231 and the Vegetation Information Guidelines. As discussed below, the Director finds that the following proposed revisions to the Utah Coal Mining Rules and Vegetation Information Guidelines are consistent with and are no less effective than the corresponding Federal regulations.

(1) *Minimum stocking and planting arrangements.* In response to the required program amendment at 30 CFR 944.16(e) (finding No. 9; 56 FR 41795, 41798; August 23, 1991), Utah proposed to revise R645–301–356.231 to require that (1) minimum stocking and planting arrangements be specified by the Utah Division of Oil, Gas and Mining (the Division) on the basis of local and regional conditions and after consultation with and approval by the agencies responsible for the administration of forestry and wildlife programs, and (2) consultation and approval be on a permit-specific basis and be performed in accordance with the Utah Vegetation Information Guidelines. In the revised Vegetation Information Guidelines, dated February 1992, Utah proposed in new item No. 8 the suggested steps in preparing premining vegetation information. This item specifies that, in accordance with R645–301–356.231, if fish and/or wildlife habitat, recreation, shelterbelts or forest products are to be a primary or secondary land use, the Division will provide in technical memoranda evidence of consultation and acceptance of proposed woody plant stocking densities with the Utah Division of Wildlife Resources and other appropriate land and wildlife management agencies. Utah's proposed revisions of Rule R645–301–356.231, as supplemented by the February 1992 revised Vegetation Information Guidelines, are no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). Therefore, the Director approves the proposed revisions and removes the required program amendment at 30 CFR 944.16(e).

(2) *Minimum size for range sites used in establishing revegetation success standards.* In response to the required program amendment at 30 CFR 944.16(f) (finding No. 10(b); 56 FR 41795, 41798; August 23, 1991), Utah proposed in the revised Vegetation Information Guidelines, dated February 1992, that 1 acre be the minimum size for range sites used in establishing revegetation success standards.

This proposed revision of the Vegetation Information Guidelines is consistent with the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). Therefore, the Director approves the proposed revision and removes the required amendment at 30 CFR 944.16(f).

(3) *References for sampling methodologies.* In response to the required amendment at 30 CFR 944.16(g) (finding No. 10(a); 56 FR 41795, 41798; August 23, 1991), Utah proposed in the revised Vegetation Information Guidelines, dated February 1992, to reference documents describing in detail the procedures for each sampling methodology.

These proposed revisions of the Vegetation Information Guidelines are consistent with the Federal regulations at 30 CFR 816.116(a) (1) and 817.116(a) (1). Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 944.16(g).

(4) *Sampling size.* In response to the required program amendment at 30 CFR 944.16(h) (finding No. 10(b); 56 FR 41795, 41798; August 23, 1991), Utah proposed in revised Appendix A of the Vegetation Information Guidelines, dated February 1992, to delete all references to maximum sample sizes.

These proposed revisions of the Vegetation Information Guidelines are consistent with the Federal regulations

at 30 CFR 816.116(a)(1) and 817.116(a)(1). Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 944.16(h).

(f) Air Quality, Rules R645–301–424 and –425.

In response to the required amendment at 30 CFR 944.16(i) (finding No. 11; 56 FR 41795, 41799; August 23, 1991), Utah proposed to amend rule R645–301–424 to reference R645–301–424.300 rather than R645–424.300, and to specify that a mine permit application shall include an air quality monitoring program, if such a program is required by the regulatory authority. Utah's proposed rules R645–301–424 and 425 are no less effective than the corresponding Federal regulation at 30 CFR 780.15(b). Therefore, the Director approves the proposed rules and removes the required program amendment at 30 CFR 944.16(i).

(g) Coal Mine Waste, Rule R645–301–528.320

In response to the required amendment at 30 CFR 944.16(j) (finding No. 12; 56 FR 41795, 41799; August 23, 1991), Utah proposed to amend rule R645–301–528.320 by removing the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines." Utah's proposed rule is no less effective than the corresponding Federal regulations at 30 CFR 816.81(a) and 817.81(a). Therefore, the Director approves the proposed rule and removes the required program amendment at 30 CFR 944.16(j).

(h) Thick Overburden, Rule R645–301–553.800

In response to the required amendment at 30 CFR 944.16(k) (finding No. 14; 56 FR 41795, 41799; August 23, 1991), Utah proposed to amend rule R645–301–553.800 by removing the words "mine plan." Utah's proposed revision to rule R645–301–553.800 is consistent with the corresponding Federal regulation at 30 CFR 816.105. The Director approves the proposed revision and removes the required amendment at 30 CFR 944.16(k).

In making this decision, the Director notes that OSM, on December 17, 1991 (56 FR 65636), promulgated new Federal regulations at 30 CFR 816.105 addressing thick overburden. OSM did so in compliance with the decision of the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1724, 1746 (D.D.C. October 1, 1984)). OSM will notify Utah, pursuant to 30 CFR 732.17, at some future date if changes are required for Utah's rules to be no less effective than the new Federal regulations.

(i) Sedimentation Ponds, Rule R645–301–742.224

In response to the required amendment at 30 CFR 944.16(l) (finding No. 16(a); 56 FR 41795, 41800; August 23, 1991), Utah proposed to amend rule R645–301–742.224 by removing the words "or qualified professional land surveyor" and referencing R645–301–512.200 rather than R645–301–512.100. Utah's proposed rule R645–301–742.224 is no less effective than the corresponding Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2). Therefore, the Director approves the proposed rule and removes the required amendment at 30 CFR 944.16(l).

(j) Certification of Maps and Plans, Rules R645–301–512.140 and R645–301–731.750.

In response to the required amendment at 30 CFR 944.16(m) (finding Nos. 16(b); 56 FR 41795, 41800; August 23, 1991), Utah proposed to amend rules (1) R645–301–512.140 to reference R645–301–731.700 through R645–301–*740* rather than R645–301–731.740, and (2) R645–301–731.750 to reference to R645–301–512.200 rather than R645–301–512.100. In its review of the proposed amendment, OSM found that Utah's proposed rule R645–301–512.140 contains a typographical error. Utah refers to "R645–301–731.700 through R645–301–*740*" when it fact it should have referenced "R645–301–731.700 through R645–301–731.740." Utah acknowledged that the reference to "R645–301–731.740" is a typographical error and that it would correct the reference to the rules to read "R645–301–731.700 through R645–301–731.740" (administrative record No. UT–773). Utah's proposed rule R645–301–512.140 is no less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(1)(i) and 784.16(a)(1)(i), and proposed rule R645–301–731–750 is no less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i). The Director approves the proposed rules and removes the required amendment at 30 CFR 944.16(m).

2. *Proposed Rules for Termination of Jurisdiction, R645–100–450 through 452, That the Director Did Not Approve in the August 23, 1991, Final Rule* Federal Register Notice

On July 3, 1990, Utah proposed termination of jurisdiction rules at rules R645–100–450 through 452. OSM did not approve Utah's July 3, 1990, proposed rule at rule R645–100–450 (finding No. 4; 56 FR 41795, 41797; August 23, 1991) because the District Court for the District of Columbia held that the Federal regulation at 30 CFR 700.11(d) was inconsistent with sections 521(a)(1) and (a)(2) of SMCRA (*National Wildlife Fed'n* v. *Lujan*, 31 ERC 2034, 2040–41 (D.D.C. August 30, 1990)).

In accordance with the court's decision, OSM suspended 30 CFR 700.11(d) on June 3, 1991 (56 FR 25036, 25037). However, the U.S. Court of Appeals for the District of Columbia reversed the U.S. District Court's remand and found that 30 CFR 700.11(d) is consistent with SMCRA and is a reasonable interpretation of it (*National Wildlife Fed'n* v. *Lujan*, 950 F.2d 765 (D.C. Cir. December 10, 1991)). The appeals court agreed with the Secretary's decision to use bond release as the point at which termination of jurisdiction occurs. In accordance with the appeals court's decision, OSM reinstated 30 CFR 700.11(d) on April 10, 1992 (57 FR 12461).

On February 28, 1992, Utah reproposed termination of jurisdiction rules at R645–100–450 through 452 that, with one exception, are substantively identical to the Federal regulations at 30 CFR 700.11(d), which have been upheld by the U.S. Court of Appeals and reinstated by OSM. The exception is Utah's proposal at R645–100–452 that "[f]ollowing a termination under R614–100–451, the Division will reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to under R614–100–451 was based upon fraud, collusion, or misrepresentation of a material fact *by the permittee*" (emphasis added). The Federal regulation at 30 CFR 700.11(d)(2) does not include the phrase "by the permittee." Because fraud or collusion could apply to any party (not just the permittee) involved in the bond release process, OSM finds that Utah's proposed rule R645–100–452 is less effective than the Federal regulation at 30 CFR 700.11(d)(2). Also, OSM construes Utah's rule to be in accordance with the opinion of the court of appeals in *National Wildlife Fed'n* v. *Lujan*, Nos. 90–5352, 90–5356, 90–5358 (D.C. Cir. Dec. 10, 1991) in that misrepresentation by the permittee is measured by an objective standard. Thus misrepresentation of a material fact would occur whenever a permittee applies for a bond release if all the requirements of the regulatory program have not been met.

The Director finds that Utah's proposed rules R645–100–450 through R645–100–451 are no less effective than

the Federal regulations at 30 CFR 700.11(d)(1) and approves them. The Director finds that Utah's proposed rule R645–100–452 is less effective than the Federal regulation at 30 CFR 700.11(d)(2) to the extent that it limits findings of fraud or collusion to actions by the permittee. The Director requires Utah to revise rule R645–100–452 to remove the phrase "by the permittee" or to otherwise revise the rule to indicate that (1) the findings of fraud and collusion are not limited to just the permittee and (2) the findings of misrepresentation of fact apply only to the permittee.

IV. Summary and Disposition of Comments

1. Public comments

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

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program.

By letter dated December 16, 1991, the U.S. Soil Conservation Service acknowledged receipt of the proposed amendment and stated that nothing in the amendment would impact its work (administrative record No. UT–705).

By letters dated December 23, 1991, and April 17, 1992, the Mine Safety and Health Administration (MSHA) acknowledged receipt of the proposed amendment and stated that Utah's proposed amendment did not conflict with MSHA's regulations (administrative record Nos. UT–706 and UT–753).

By letters dated December 25, 1991, and March 24, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record Nos. UT–714 and UT–745).

By letters dated December 11, 1991, and March 24, 1992, the U.S. Army Corps of Engineers acknowledged receipt of the proposed amendment and stated that the proposed amendment was satisfactory (administrative record Nos. UT–700 and UT–744).

By letter dated March 26, 1992, the U.S. Bureau of Mines acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record No. UT–743).

By telephone conversation on April 22, 1992, the U.S. Forest Service stated that it had no comments (administrative record No. UT–755).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its rules pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (administrative record No. UT–691.1). EPA did not respond to this request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendment to the SHPO and ACHP for comment.

By letters dated December 6, 1991, and March 20, 1992, Utah's SHPO acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record Nos. UT–699 and UT–740). ACHP did not provide any comments to OSM.

V. Director's Decision

Based upon the above findings the Director approves, with one exception and additional requirement, the proposed amendment as submitted by Utah on November 20, 1991, and as revised by it on February 28, 1992.

As discussed respectively in finding Nos. 1(a), (b), (d), (e), (f), (g), (h), (i), and (j), the Director approves the proposed provisions of the Utah rules pertaining to the definition of "valid existing rights," areas designated as unsuitable for mining by act of Congress, permit application requirements, revegetation success standards, air quality, coal mine waste, thick overburden, sedimentation ponds, and cross sections and maps. As discussed respectively in finding Nos. 1(c) and (e), the Director approves the "Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645–300–110," dated February 28, 1992, and the revisions to the Vegetation Information Guidelines, dated February 1992. The Director approves these rules and guidelines with the provision that Utah fully promulgate them in identical form to those submitted to and reviewed by OSM and the public.

As discussed in finding No. 2, the Director does not approve Utah's proposed rule at R645–100–452 to the extent that it limits the findings of fraud or collusion to actions by the permittee. The Director requires Utah to revise this rule.

The Federal regulations at 30 CFR Part 944 codifying decisions concerning the Utah program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VI. Procedural Determinations

1. National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

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

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal

which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

3. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.1.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

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

2. Section 944.15 is amended by adding paragraph (u) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(u) With the exception of proposed R645–100–452 to the extent that it limits the findings of fraud or collusion to actions by the permittee, revisions to the following Utah permanent regulatory program rules as submitted to OSM on November 20, 1991, and revised on February 28, 1992, are approved effective September 11, 1992:

R645–100–200	Definition of "Valid Existing Rights".
R645–100–400 through 452.	Termination of Jurisdiction.
R645–103–220	Areas Designated Unsuitable for Mining by Act of Congress.
R645–301–111.400	Permit Application Requirements.
R645–301–356.231	Revegetation Success Standards.
R645–301–425	Air Quality.
R645–301–528.320	Coal Mine Waste.
R645–301–553.800	Thick Overburden.
R645–301–742.224	Sedimentation Ponds.
R645–301–512.140 and R645–301–731.750.	Cross Sections and Maps.

"Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645–300–110," dated February 28, 1992.

Revisions to the Vegetation Information Guidelines, dated February 1992.

3. Section 944.16 is revised by removing and reserving paragraphs (a) through (m) and adding paragraph (p) to read as follows:

§ 944.16 Required regulatory program amendments

* * * * *

(a)—(m) [Reserved]

* * * * *

(p) By November 10, 1992, Utah shall submit a proposed amendment for the termination of jurisdiction rule at R645–100–452 removing the phrase "by the permittee," or otherwise revising the rule to indicate that the findings of fraud or collusion are not limited to just the permittee, and the misrepresentation of fact applies only to the permittee.

[FR Doc. 92–21910 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR") to revoke the authority in § 550.511 for transfers between blocked accounts in different domestic banking institutions, and to revoke § 550.515, which authorized receipt of payments from unblocked sources for obligations of the Government of Libya to persons in the United States. These classes of transactions are now prohibited unless specifically licensed by FAC. In addition, this final rule requires banking institutions to pay interest on blocked funds and authorizes debits to blocked accounts by U.S. banking institutions for normal service charges. Finally, this rule adds references to delegations of authority to the Director of FAC subsequent to the delegation made pursuant to Executive Order 12543.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: LSR § 550.511 previously permitted transfers of funds between blocked accounts in different domestic banking institutions, provided the name or designation of the accounts remained identical. Out of concern for possible abuse of such funds movements, future transfers of this nature may only be authorized by specific license. The notification requirement in paragraph (g) of § 550.511 is also clarified. This rule also revokes LSR § 550.515, which authorized the transfer of fresh funds through or to any banking institution or other person within the United States solely for purposes of payment of obligations owed by the Libyan government to persons within the United States. "Fresh funds" are funds from an unblocked account outside the United States. To ensure that transfers from the Libyan government are received only for

obligations lawfully arising within the context of the Libyan Sanctions Regulations, such payments must now be authorized by specific license.

In addition, this final rule adds a general directive license as § 550.212, requiring that blocked funds be held in interest-bearing accounts, and a new general license as § 550.520, permitting banking institutions holding blocked accounts to debit the accounts for reimbursement for normal service charges incurred in the administration of the accounts.

Finally, § 550.805 is amended to note the delegation from the Secretary of the Treasury to the Director of FAC of the Secretary's authority pursuant to Executive Orders 12544 and 12801 and any further Executive orders issued pursuant to the President's declaration of a national emergency with respect to Libya in Executive Order 12543.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedures Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedures, Banking, Blocking of assets, Investments, Libya, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 & –9; E.O. 12543, 3 CFR, 1986 Comp., pp. 181–2; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, April 17, 1992.

Subpart B–Prohibitions

2. Section 550.212 is added to read as follows:

§ 550.212 Holding of certain types of blocked property in interest-bearing accounts.

(a) (1) Any U.S. person, including a banking institution, currently holding property subject to § 550.209 which, as of the later of September 11, 1992 or the date of receipt, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status, as of such date, in a banking institution in the United States, or, for property held outside the United States, the foreign branch of a U.S. banking institution, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement in paragraph (a)(1) of this section shall apply to funds, currency, bank deposits, accounts, and any other financial assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the blocked Government of Libya entity having an interest in the accounts.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a banking institution earning interest at rates that are commercially reasonable. "Commercially reasonable" means the rate currently offered other depositors on deposits of comparable size and maturity. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels or real estate, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Paragraph (a) of § 550.511 is amended by adding after the words "from any blocked account" the words "in another banking institution within the United States, or"; and the title of § 550.511 and paragraph (g) thereof are revised as follows:

§ 550.511 Payments and transfers to blocked accounts in domestic banks.

* * * * *

(g) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW., Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the Libyan entity pursuant to the requirements of this part, and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, and the amount of the payment transfer.

§ 550.515 [Removed]

4. Section 550.515 is removed and reserved.

5. Section 550.520 is added to read as follows:

§ 550.520 Entries in certain accounts for normal service charges.

(a) Any banking institution within the United States is hereby authorized to:

(1) Debit any blocked account with such banking institution (or with another office within the United States of such banking institution) in payment or reimbursement for normal service charges owed to such banking institution by the owner of such blocked account.

(2) Make book entries against any foreign currency account maintained by it with a banking institution in Libya for the purpose of responding to debits to such account for normal service charges in connection therewith.

(b) As used in this section, the term "normal service charge" shall include charges assessed according to the published fee schedule of the holder of such property and applicable to other depositors on deposits of comparable size and maturity.

Subpart H—Procedures

§ 550.805 [Amended]

6. Section 550.805 is amended by adding the words ", Executive Order 12544, Executive Order 12801, and any further Executive orders relating to the national emergency declared with respect to Libya in Executive Order 12543" after "Executive Order 12543."

Dated: August 25, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–21846 Filed 9–8–92; 11:57 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS WARRIOR (MCM 10) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS WARRIOR (MCM 10) is a vessel of the Navy, which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex 1, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I sec. 2(f)	Forward masthead light not in forward quarter of ship Annex I sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS WARRIOR	MCM 10			X	64

Dated: August 26, 1992.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 92–21935 Filed 9–10–92; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 87–410 and 88–159; RM–5802, RM–6204, RM–6206, and RM–6207; DA 92–1140]

FM Radio Broadcasting Services; Waterbury and Royalton, Vermont, New London, New Hampshire, and Plattsburgh, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: We grant the request for reconsideration filed by Harvest Broadcasting, Inc. of the *Memorandum Opinion and Order* in this proceeding, 56 FR 46121, published September 10, 1991. We rescind the allotments of Channel 276A to Waterbury, Vermont, Channel 277A to Royalton, Vermont, and Channel 278A to Plattsburgh, New York, and allot instead Channel 277A at Waterbury, Channel 276A to Royalton, and Channel 286A at Plattsburgh. We also modify the authorization of Station WGLY, Waterbury, to specify the alternate Class A channel. See also Supplemental Information, *infra.*

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket Nos. 87–410 and 88–159, adopted August 18, 1992 and released September 4, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Channel 277A can be allotted to Waterbury in compliance with the Commission's minimum interstation distance separation requirements at Station WGLY's current site, where it has operated under Special Temporary Authority since 1986, restricted to 14.2 kilometers (8.9 miles) west-northwest of Waterbury at coordinates North Latitude 44–21–52 and West Longitude 72–55–53. Channel 276A can be allotted to Royalton in compliance with the Commission's minimum interstation distance separation requirements using a site restricted to 9.4 kilometers (5.8 miles) south of Royalton at coordinates North Latitude 43–43–54 and West Longitude 72–31–58. Channel 286A can be allotted to Plattsburgh in compliance with the Commission's minimum interstation distance separation requirements with a site restricted to 5.7 kilometers (3.5 miles) south of Plattsburgh at coordinates North Latitude 44–38–57 and West Longitude 73–26–22. Canadian concurrence has

been obtained for all allotments, including the Waterbury and the Plattsburgh allotments, whose short-spacing to three Canadian allotments are permitted under specially negotiated agreement. With this action, the proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 278A and adding Channel 286A at Plattsburgh.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 276A and adding Channel 277A at Waterbury, and by removing Channel 277A and adding Channel 276A at Royalton.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 92–21913 Filed 9–10–92; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4204–9]

Arizona: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Affirmation of Immediate Final Rule.

SUMMARY: This notice responds to the comment received on the immediate final rule published July 13, 1992 (57 FR 30905), and affirms the Agency's decision to authorize Arizona's revised program.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: April Katsura, U.S. EPA Region IX (H–2–2), 75 Hawthorne Street, San Francisco, California 94105, Phone: 415/744–2026.

SUPPLEMENTARY INFORMATION: On July 13, 1992, EPA published an immediate final rule (57 FR 30905) which announced the Agency's decision to authorize Arizona's revisions to its hazardous waste program—interim authorization for corrective action and final authorization for all other provisions. One comment was received during the public comment period. After considering the comment, the Regional Administrator has decided to affirm his decision to authorize the State of Arizona for the program revisions. The following is a summary of the comment and the Regional Administrator's response.

Comment: Arizona's enactment of Senate Bill 1053, 1992 Arizona Session Laws Ch. 107 impacts the State's ability to regulate hazardous waste in a manner equivalent to and consistent with the federal program. Pursuant to S.B. 1053, government actions to protect the public health and safety can be taken only in response to "real and substantial threats," must "significantly advance the health and safety purpose," and can be "no greater than necessary" to achieve the health and safety purpose. In addition, permit conditions can only be imposed if they are "expressly authorized by law" and "substantially advance" the purpose for which the permit is issued.

Response: S.B. 1053 provides restrictions on governmental actions to protect public health and safety in order to protect private property rights. S.B. 1053 was enacted by the Arizona legislature this past session and becomes effective September 30, 1992. However, the Arizona Attorney General is not required to publish guidelines necessary to implement this law until January 1, 1994. Until those guidelines are finalized, the potential impact of S.B. 1053 on Arizona's hazardous waste program remains speculative.

Nevertheless, the commenter was concerned that the "literal language" of the bill would prohibit Arizona from regulating its hazardous waste program in a manner equivalent to and consistent with the federal program. Because a response to this comment requires interpretation of the bill, on September 3, 1992 the State of Arizona provided Environmental Protection Agency with a preliminary opinion from its Office of the Attorney General discussing the impact of S.B. 1053 on Arizona's hazardous waste program. Arizona's Office of the Attorney General makes the following points.

First, the enforcement of existing RCRA regulations, which have been adopted by ADEQ, is not affected by S.B. 1053 because the definition of "governmental action" covered by the bill includes only rules proposed by a state agency, not its existing rules. In addition, S.B. 1053 does not cover "orders that are authorized by statute, that are issued by a state agency or a court of law and that were the result of a violation of state law." ADEQ has express authority to issue compliance orders and to obtain court orders to enforce its laws and rules encompassing the federal hazardous waste regulations. Therefore, RCRA regulations currently adopted by ADEQ as rules are enforceable under S.B. 1053.

Arizona states that while S.B. 1053 sets forth principles concerning governmental "takings" which may, when in effect, restrict certain government actions, the State's RCRA regulations are unaffected because they satisfy those principles. For example, RCRA regulations address real and substantial threats, significantly advance the health and safety purposes, and are no greater than necessary to achieve that purpose. Therefore, these restrictions would not present an additional burden on Arizona's ability to regulate hazardous waste.

S.B. 1053 also requires permit conditions to directly relate to the purpose for which the permit is issued, and to substantially advance that purpose and be expressly authorized by law. This subsection was enacted with the caveat that agencies shall comply with S.B. 1053 "to the extent permitted by law."

According to the Arizona Attorney General, permit conditions found in Arizona's RCRA regulations directly relate to the purpose for which any RCRA permit is issued and substantially advance that purpose. In addition, S.B. 1053's requirement that conditions imposed in permits be expressly authorized by law must be read in light of Arizona Revised Statutes (A.R.S.) section 49–922 which authorizes the Department of Environmental Quality's RCRA program. Specifically, section 49–922.A authorizes the Director to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations. Thus, any permit conditions necessary to protect public health and safety are expressly authorized by A.R.S. section 49–922.A.

Finally, the Arizona Attorney General's letter points out that S.B. 1053 requires that any restriction imposed on the use of private property shall be proportionate to the extent the use contributes to the overall problem that the restriction is to redress. This restriction also applies only to the extent permitted by law and must be read in light of A.R.S. 49–922.A. Thus any proportionality requirement cannot be interpreted to cause the State's hazardous waste program to be inconsistent with or not equivalent to, federal RCRA regulations.

Based on the preliminary opinion of the Office of the Attorney General as to the impact of S.B. 1053 on Arizona's RCRA program, we affirm our decision to authorize Arizona's revisions to its hazardous waste program.

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 42 U.S.C. 6912(a), 6926, 6974(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 Arizona'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.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 4, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92-22134 Filed 9-10-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-180; RM-7699, RM-7818, RM-7819]

Radio Broadcasting Services; Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KRTS, Inc., substitutes Channel 221C1 for Channel 221C2 at Seabrook, Texas, and modifies Station KRTS(FM)'s license accordingly (RM-7699). See 56 FR 30375, July 2, 1991. Channel 221C1 can be allotted to Seabrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 40 kilometers (24.8 miles) southwest at the petitioner's requested site. The coordinates for Channel 221C1 at Seabrook are North Latitude 29-19-11 and West Longitude 95-19-44. The mutually exclusive proposal of Helen Maryse Casey to substitute Channel 258C2 in lieu of Channel 259A at Huntsville, Texas, is denied (RM-7818). With this action, this proceeding is terminated.

EFFECTIVE DATE: October 19, 1992.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-180, adopted August 14, 1992 and released September 3, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 221C2 and adding Channel 221C1 at Seabrook.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-21843 Filed 9-10-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN: 2900-AF98

Providing Outpatient Dental Services for Veterans Whose Dental Conditions are Complicating a Medical Condition Under Treatment

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the eligibility of veterans for outpatient dental services. The Veterans Benefits Programs Improvement Act of 1991 authorized dental services when the treatment of dental conditions is medically necessary in preparation for hospital admission, or is medically necessary for a veteran otherwise receiving care and services in a VA medical center.

EFFECTIVE DATES: This amendment is effective August 14, 1991, the effective date of the Act upon which it is based.

FOR FURTHER INFORMATION CONTACT: Monica J. Wilkins, Policies and Procedures Division (161B2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Phone: (202) 535-7439.

SUPPLEMENTARY INFORMATION: The Veterans Benefits Programs Improvement Act of 1991, Public Law 102-86 enacted August 14, 1991, amended 38 U.S.C. 612(b), renumbered as 38 U.S.C. 1712(b), to authorize outpatient dental services for veterans whose dental conditions are complicating a medical condition under treatment. Specifically, this law applies to veterans preparing for hospital admission or for any other veteran receiving care or services in a VA medical center. This final regulatory amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal regulation. This regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy. Since this amendment conforms VA regulations to the law, prior publication for public notice and comment is unnecessary and will not be done; consequently, this change is not a rule subject to the Regulatory Flexibility Act In any case, the Secretary hereby certifies that this regulation will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code 601-612. This regulatory amendment incorporates into VA regulations the new statutory criteria for eligibility for dental services. Any economic impact on small entities will be the result of the law, not this regulatory amendment. The Catalog of Federal Domestic Assistance Number is 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations,

Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: July 31, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

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

Authority: 72 Stat. 1114, 38 U.S.C. 501, unless otherwise noted.

2. In § 17.123, paragraph (j) is redesignated as paragraph (j)(1); paragraph (j)(2) and its authority citation are added to read as follows:

§ 17.123 Authorization of outpatient dental treatment.

* * * * *

(j)(1) *Class VI.* * * *

(2) Any veteran scheduled for admission or otherwise receiving care and services under Chapter 17 of 38 U.S.C. may receive outpatient dental care which is medically necessary, i.e., is for a dental condition clinically determined to be complicating a medical condition currently under treatment.

(Authority: 38 U.S.C. 1712)

[FR Doc. 92–21692 Filed 9–10–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 920822–2222]

Taking and Importing of Marine Mammals; Import Requirements

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

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the definition of "intermediary nation" in 50 CFR 216.3 to apply only to those nations that import yellowfin tuna or yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) by purse seine from a nation whose yellowfin tuna is subject to import restrictions. This revision is made in order to allow the importation of yellowfin tuna and yellowfin tuna products from nations that do not import ETP purse-seine caught yellowfin tuna or products containing yellowfin tuna directly or indirectly from nations whose yellowfin tuna is subject to such import restrictions.

DATES: This interim final rule is effective September 11, 1992. Comments are invited and must be received on or before October 13, 1992.

ADDRESSES: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910. Copies of the Environmental Assessment (EA) are available from E. Charles Fullerton, Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources, NMFS (301–713–2055).

SUPPLEMENTARY INFORMATION: The MMPA requires the prohibition of imports of yellowfin tuna and yellowfin tuna products from intermediary nations unless those nations act to prohibit importation of the same yellowfin tuna prohibited from importation into the United States. On January 10, 1992, the U.S. District Court for the Northern District of California in *Earth Island Institute* v. *Mosbacher* issued an order that construed the scope of the Marine Mammal Protection Act's (MMPA) intermediary nation provisions. Prior to the Court's order, the Department of Commerce had interpreted the intermediary nation provision to require the prohibition of imports of yellowfin tuna from nations that were known to import yellowfin tuna from a nation subject to primary import prohibitions, and that also exported yellowfin tuna products to the U.S. market. Under that interpretation, the countries of France, Italy, Japan, Panama and Costa Rica were subject to an intermediary nation import prohibition, which went into effect on May 24, 1991. As a result of the Court's January 10, 1992, ruling, the following 15 nations, which were determined to have imported yellowfin tuna or yellowfin tuna products during 1991 and also to have exported yellowfin tuna to the United States, were added to the list of intermediary nations: Canada, Colombia, Ecuador, Indonesia, Rep. of Korea, Malaysia, Marshall Islands, Netherlands Antilles, Singapore, Spain, Taiwan, Thailand, Trinidad & Tobago, United Kingdom, and Venezuela.

The intermediary nation sanctions against these additional nations went into effect at 12:01 a.m. on January 31, 1992, as directed by the Court. Since that date, the intermediary nation import prohibition has been lifted for nine countries. The Marshall Islands, Ecuador, Panama, Indonesia and Korea have provided acceptable certification and proof that they have prohibited the importation of yellowfin tuna and yellowfin tuna products from nations subject to a primary import prohibition. Taiwan, Trinidad & Tobago, and Venezuela successfully demonstrated that they are not intermediary nations under the current definition. Thailand instituted an official control system that prohibits the importation of yellowfin tuna caught in the ETP with methods harmful to dolphins.

Shortly after the intermediary nation sanctions went into effect, NMFS was contacted by representatives of the tuna industry with respect to the possibility of changing the definition of an intermediary nation in order to lessen the trade burden of the sanctions on nations that demonstrate they are not trading with nations subject to the primary import prohibition. Earth Island Institute has indicated that it would support the substance of such a change.

On March 30, 1992, NMFS received a letter from the National Fisheries Institute (NFI) requesting a redefinition of intermediary nation that would exclude nations that import only dolphin-safe tuna. The letter indicates that the NFI believes such a change to be consistent with the reference in Section 101 of the MMPA to tuna caught with harmful fishing gear, and with the policy of the MMPA of encouraging dolphin-safe fishing practices.

NMFS has reviewed the NFI letter in light of the MMPA, the court's order, and support for a redefinition expressed by the other parties to the litigation. NMFS has concluded that a redefinition of intermediary nation is permissible under the language of the MMPA and the court's ruling and would carry out the congressional intent. Accordingly, NMFS has drafted the new definition for publication in the **Federal Register** subsequent to informing Judge Thelton E. Henderson of the United States District Court for the Northern District of California. This rulemaking was submitted to Judge Henderson in August, 1992.

This interim final rule modifies the definition of "intermediary nation" by excluding those nations that certify and provide reasonable proof that they do not import yellowfin tuna prohibited from entry into the United States. It will also increase the amount of "dolphin-safe" tuna authorized to enter the United States and reduce the number of nations subject to the yellowfin tuna intermediary nation sanctions.

NMFS believes that narrowing the definition of intermediary nation in this manner will not unjustly impact other nations, and will not result in the importation into the United States of yellowfin tuna prohibited from direct export to the United States.

The intermediary nation import prohibition applies unless the nation certifies and provides reasonable proof to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to 16 U.S.C. 1371(a)(2)(B) and the Assistant Administrator, as soon as practicable after receiving complete information regarding certification and proof, makes an affirmative finding that the nation does not constitute an intermediary nation for purposes of § 216.24(e)(5)(xiv).

Classification

The Assistant Administrator has determined that this interim final rule will not have a significant impact on the human environment. This determination is based on the impact analyses provided in the environmental assessment (EA) prepared for the interim final yellowfin tuna import rule, which was published on March 7, 1989 (54 FR 9438). Therefore, an environmental impact statement is not required. The EA is available upon request (see **ADDRESSES**).

Because they involve a foreign affairs function of the United States, the provisions of this rule are being promulgated without an opportunity for prior public comment and without a delayed effectiveness period as provided by section 553(a)(1) of the Administrative Procedure Act. The modification to the definition of intermediary nation is intended to alleviate unnecessary burdens on nations that trade in yellowfin tuna but do not import ETP purse seine-harvested yellowfin tuna from nations that are prohibited from exporting that product to the United States, and is closely linked with the Government's foreign policy concerning relations with these nations. However, public comment is solicited while this rule is in effect and comments received will be considered in preparing the final rule.

The Assistant Administrator has determined that this interim final rule is not subject to review under E.O. 12291 because it involves a foreign affairs function of the United States (section 1(a)(2)). In accordance with section 4(a) of the President's January 28, 1992, Directive, this action is exempt from the 90-day moratorium on regulatory actions because it reduces the trade burden of sanctions imposed under the MMPA. Also, because notice-and-comment rulemaking are not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

This interim final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal management program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: August 31, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTATION OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, the definition of "intermediary nation" is revised to read as follows:

§ 216.3 Definitions.

* * * * *

Intermediary nation means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products, unless the nation certifies and provides reasonable proof to the Assistant Administrator that it has not imported, within the preceding 6 months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to 16 U.S.C. 1371(a)(2)(B), and the Assistant Administrator, as soon as practicable after receiving complete information regarding certification and proof, makes an affirmative finding that the nation does not constitute an intermediary nation for purposes of § 216.24(e)(5)(xiv). Reasonable certification and proof for purposes of this paragraph shall mean the submission by a responsible government official from the nation of a document reflecting the nation's customs records for the required pre-certification period, together with a certificate attesting that the document is accurate. Shipments of yellowfin tuna or yellowfin tuna products through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation under this definition. An affirmative finding under this paragraph shall be valid for 12 months from the date of issuance, and may be renewed for any subsequent 12-month period on the submission of updated certification and proof covering the previous 12-month period and submitted 3 months prior to the date of expiration of the finding. An affirmative finding will be revoked at any time that the Assistant Administrator finds that the nation has imported yellowfin tuna or yellowfin tuna products subject to a direct ban on importation into the United States. The Assistant Administrator shall act to grant or deny any request to revoke an affirmative finding under this paragraph that is accompanied by specific and detailed supporting information or documentation within 30 days of receipt of such request.

* * * * *

3. In § 216.24, paragraphs (e)(3)(i) (C) and (D) and (e)(5)(xiv) are revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(C) *Intermediary nations.* No shipment containing an item listed in paragraph (e)(2)(i) of this section may be imported into the United States from an intermediary nation subject to paragraph (e)(5)(xiv) of this section if a ban is currently in force prohibiting the importation.

(D) *Harvesting and intermediary nations.* No shipment containing an item in paragraph (e)(2)(i) of this section may be imported into the United States from a nation that is both a harvesting nation subject to paragraph (e)(5)(i) of this section and an intermediary nation subject to paragraph (e)(5)(xiv) of this section unless the necessary findings have been made under both provisions and a ban is not currently in force.

* * * * *

(5) * * *

(xiv) Any yellowfin tuna or yellowfin tuna products in the classifications

listed in paragraph (e)(2)(i) of this section, from any intermediary nation, may not be imported into the United States unless the Assistant Administrator determines and publishes in the **Federal Register** that the intermediary nation has provided reasonable proof and has certified to the United States that it has acted to ban the importation into its nation of yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States. The intermediary nation's ban must be effective within 60 days of the effective date of the U.S. ban, and the intermediary nation must supply the Assistant Administrator with the reasonable proof and certification within 90 days of the effective date of the U.S. ban in order to avoid imposition of the intermediary nation ban on the 91st day. A prohibition on imports under this paragraph may be lifted by the Assistant Administrator upon a determination announced in the **Federal Register**, based upon new information supplied by the government of the intermediary nation, that the nation has acted to prohibit the importation of ETP purse seine-harvested yellowfin tuna and yellowfin tuna products from those nations from which the United States has banned the importation of ETP purse seine-harvested yellowfin tuna and tuna products. Where a prohibition on imports has been lifted under this paragraph, it shall be reinstated at any time that the Assistant Administrator finds that the nation has imported yellowfin tuna or yellowfin tuna products subject to the direct ban on importation.

* * * * *

[FR Doc. 92–21951 Filed 9–10–92; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Parts 217 and 227

[Docket No. 920928–2228]

Sea Turtle Conservation, Shrimp Trawling Requirements

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

ACTION: Notice and request for comments.

SUMMARY: NMFS issues this notice to allow limitations on tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in an area off the coast of Louisiana. This area was affected by Hurricane Andrew. NMFS has received complaints that the requirement to use TEDs makes trawling more difficult in this area. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricane make TED use impracticable.

DATES: This notice is effective from September 4, 1992 through October 5, 1992. Comments on this notice must be submitted by October 5, 1992.

ADDRESSES: Comments on this notice should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2322) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in waters off of Louisiana. Regulations requiring the use of TEDs appear at 50 CFR parts 217 and 227 and were amended by an interim final rule filed on September 1, 1992. These regulations require shrimp trawlers 25 feet (7.6 m) long or longer in offshore waters of the Gulf Area, which includes waters off Louisiana, to use approved TEDs in trawls from March 1 through November 30, each year. Shrimp trawlers less than 25 feet long in offshore waters and all vessels in inshore waters of the Gulf Area may limit tow times to 90 minutes or less as an alternative to using TEDs. Tow time is defined as the interval from trawl doors entering the water to trawl doors being removed from the water.

Recent Events

On August 26, 1992, Hurricane Andrew struck the Louisiana coast with a devastating impact. Fishermen reported that TEDs clogged with debris stirred up by the storm caused shrimp to be excluded from their nets. NMFS conducted an aerial survey of the entire Louisiana coastal area from the Mississippi River to the Texas border, on September 3, 1992, and identified a limited area with floating logs, sea grass, plastic and other debris. The area in question is from near the mouth of the Mississippi River to Atchafalaya Bay, Louisiana extending 15 nautical miles offshore. NMFS is also placing observers on shrimp vessels conducting research to assess the effectiveness of TEDs in this and other areas.

Special Environmental Conditions

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds that the impacts of Hurricane Andrew may have created special environmental conditions which may make trawling with TED-equipped nets impracticable. NMFS is investigating the situation, both with aerial surveys and observers on shrimp vessels. NMFS encourages the continued use of TEDs and suggests that the use of TEDs may help exclude debris generated by the hurricane. NMFS gear specialists are evaluating the usefulness of TEDs in dealing with this problem. Nonetheless, until further information is obtained, the Assistant Administrator issues this notice to authorize the use of restricted tow times, as an alternative to the requirement to use TEDs, in a restricted area off the coast of Louisiana, acting pursuant to the interim final regulations filed on September 1, 1992, to be codified at 50 CFR 227.72(e)(3)(iii).

NMFS TED Testing

NMFS studies have shown that the problem of clogging either by seagrass, algae or other debris is not unique to TED-equipped nets. When fishermen choose to trawl in such problem areas, they will experience clogging with or without TEDs. NMFS gear specialists have tested TEDs, specifically modified to exclude seagrass, debris and algae, and compared them to non-TED equipped nets. Shrimp catches with and without TEDs were highly variable; both TED and non-TED equipped nets clogged with debris.

NMFS and shrimpers have developed two TEDs that help resolve the clogging problem. One is known as the Anthony "weedless" TED, which allows algae and other debris to pass by the TED and wash into the cod end of the net. NMFS has had good experience with this device in the Gulf of Mexico. In addition, NMFS has tested a "supershooter" hard TED that also eliminates algae. NMFS tests have shown that shrimp loss with the supershooter TED in areas where clogging is experienced is negligible when compared to a net without a TED.

Sea Turtle Conservation Measures

The authorization provided by this notice applies to shrimp trawlers 25 feet (7.6 m) in length or longer in a restricted area off the coast of Louisiana. The "Louisiana restricted area" is the offshore waters of Louisiana from near

the mouth of the Mississippi River to near Atchafalaya Bay, Louisiana (from 89°25′ W. longitude to 93° W. longitude) extending 15 nautical miles offshore. The offshore waters are delineated from the inshore waters by the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972).

A shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes (measured from the time trawl doors enter the water, until they are retrieved from the water). NMFS does not anticipate that there will be adverse effects to sea turtles by substituting tow times for TEDs if shrimpers comply with the tow time requirements. The 55-minute tow time limitation allows at least 40 minutes bottom time for trawling. The 55-minute tow time has also been determined to constitute an acceptable limit for forced submergence of sea turtles in shrimp trawls, and the more restricted tow time facilitates enforcement. The National Academy of Sciences report, "Decline of the Sea Turtles: Causes and Prevention," provided guidance on effects of tow times on sea turtles. The report concluded that tow times of 40 minutes in summer months and 60 minutes during winter months would provide protection comparable to that afforded by TEDs. Thus, a tow-time limitation appears to be an effective alternative to mandatory TED use and should provide comparable protection for sea turtles.

Shrimp trawlers are required to register with the Assistant Administrator in order to use restricted tow times in lieu of TEDs.

If required by the Assistant Administrator, the owner and operator of a shrimp trawler 25 feet (7.6 m) in length or longer trawling in the Louisiana restricted area must carry a NMFS-approved observer.

The owner or operator of a shrimp trawler 25 feet (7.6 m) in length or longer trawling in the Louisiana restricted area must register with the Regional Director, NMFS, Southeast Region by telephoning at (813) 893–3163. The following information is requested: The name and official number of the vessel; The time and date of the telephone registration; the number of the State permit authorizing fishing in the restricted area; A statement that the owner or operator intends to trawl in the Louisiana restricted area using the limited tow times option; and the dates trawling operators in the Louisiana restricted area are expected to be conducted.

Additional Conditions

The Assistant Administrator may impose additional conditions on shrimp trawlers operating in the Louisiana restricted area in order to mitigate the impacts of the hurricane, such as a requirement to retrieve debris entangeled in their nets and bring it to shore for disposal, rather than disposing of the debris at sea. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution from Ships) may apply to disposal at sea.

Additional Sea Turtle Conservation Measures; Termination

The Assistant Administrator, at any time, may modify the required conservation measures through notice in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, including requiring more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that conditions do not make trawling with TEDs impracticable, that there is insufficient compliance with the required conservation measures, that compliance cannot be monitored effectively. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or twenty lethal takes of loggerhead turtles.

The Assistant Administrator will terminate this exemption for the Louisiana restricted area, if the incidental take level is exceeded, if significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles associated with fishing activities in the Louisiana restricted area occur, if there is insufficient compliance with the required conservation measures, if compliance cannot be monitored effectively or if conditions do not make trawling with TEDs impracticable. Finally, the Assistant Administrator may terminate this exemption for the Louisiana restricted area, if shrimpers refuse to accept observers when requested to do so and the level of observer coverage is insufficient to adequately monitor incidental take. The Assistant Administrator may take such action, for these or other reasons, as appropriate, at any time. A notice will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in the Louisiana restricted area.

Classification

The Assistant Administrator has determined that this notice is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This notice does not require a regulatory impact analysis under Executive Order 12291 because it is not a "major rule."

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule filed on September 1, 1992. A supplemental EA was prepared specifically for this action concludes, that with specified mitigation measures, this action would have no significant impact on the human environment.

This notice allows the Assistant Administrator to establish a registration program. Such a program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, requests for registration to trawl using restricted tow times in lieu of TEDs in the Louisiana restricted area. This collection has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267.

The public reporting burden for this collection of information is estimated to average 7 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 of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**). See OMB control number 0643–0267 and related analysis. The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to issue this notice on an emergency basis and that it is impracticable and contrary to the public interest to provide prior notice and opportunity for comment. Emergency action is needed so that fishermen are

able to catch shrimp as efficiently as possible in the Louisiana restricted area (consistent with protecting endangered and threatened sea turtles). Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this notice is being made immediately effective.

Dated: September 4, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-21884 Filed 9-4-92; 5:11 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Closure.

SUMMARY: NMFS announces the closure of the treaty Indian fishery in the exclusive economic zone from the U.S.-Canada border to Point Chehalis, Washington (46°53'18" N. latitude), at 2359 hours local time, August 5, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the overall treaty Indian ocean quota of 68,000 coho salmon has been reached and the fishery should be closed for the remainder of its scheduled season. This action is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2359 hours local time, August 5, 1992. Actual notice to affected treaty Indian fishermen was provided by the treaty tribes and tribal regulations. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. However, comments will be accepted through September 21, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700—Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Treaty Indian fishing is subject to the regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1), which state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 treaty Indian ocean fishery for all salmon species except coho salmon would begin May 1 and continue through the earlier of June 30 or the attainment of the chinook quota, and the treaty Indian ocean fishery for all salmon species would begin no earlier than July 1 and continue through the earliest of September 30 or the attainment of either the chinook or coho salmon quota. The overall treaty Indian ocean quotas are 33,000 chinook and 68,000 coho salmon. Inseason adjustments during the season were imposed by treaty Indian tribal regulations. Based on the best available information, the treaty Indian ocean fishery reached the overall quota of 68,000 coho salmon on August 5. The treaty Indian tribes closed this fishery by tribal regulations, effective 2359 hours local time, August 5.

This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-21849 Filed 9-4-92; 4:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 177
Friday, September 11, 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.

FEDERAL TRADE COMMISSION

16 CFR Parts 229 and 232

Request for Comments Concerning Guides for Advertising Fallout Shelters and Guides for Advertising Radiation Monitoring Instruments

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for Advertising Fallout Shelters ("Fallout Shelter Guides") and its Guides for Advertising Radiation Monitoring Instruments ("Radiation Monitoring Instruments Guides"). The Commission is soliciting the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until October 13, 1992.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Fallout Shelter Guides should be identified as "16 CFR Part 229—Comment." Comments about the Radiation Monitoring Instruments Guides should be identified as "16 CFR Part 232—Comment." Comments about both guides should be identified as "16 CFR Parts 229, 232—Comment."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3013.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision.

At this time, the Commission solicits written public comments concerning the Commission's Guides for Advertising Fallout Shelters ("Fallout Shelter Guides"), 16 CFR part 229, and the Commission's Guides for Advertising Radiation Monitoring Instruments ("Radiation Monitoring Instruments Guides"), 16 CFR part 232. These guides are being discussed together here because both pertain to products designed for home civil defense use in the event of nuclear war.

These two guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Fallout Shelter Guides concern acceptable and unacceptable claims for advertising and sale of fallout shelters for protection against radiation and the effects of a blast overpressure. Specifically, the guides pertain to claims about when structures can be designated as fallout and blast resistant. The guides also include guidance about installation, disclosures as to capacity, pictorial and other misrepresentations, deceptive prices, financial terms, guarantees, connection, approval or endorsement by government agencies, maintenance or repairs, use of terms such as "custom made" or "custom built", model shelters, combination or dual-purpose shelters, bait advertising, lottery schemes, and scare tactics.

The Radiation Monitoring Instruments Guides give guidance about acceptable and unacceptable claims made in advertising, labeling, or other promotional materials, however disseminated, of radiation monitoring instruments, devices, or other products that are represented in any manner to be of use to the general public for detecting or measuring fallout radiation. Specifically, the guides include guidance concerning claims that products are adequate for home civil defense use, that they are approved or endorsed by government agencies, and claims about product performance and other characteristics.

Accordingly, the Commission solicits public comments on the following questions:

(1) Have these guides had a significant economic impact (costs or benefits) on entities subject to their requirements?

(2) Is there a continuing need for these guides?

(3) What burdens does adherence with these guides place on entities subject to their requirements?

(4) What changes should be made to these guides to minimize the economic effect on such entities?

(5) Do either of these guides overlap or conflict with other federal, state, or local government laws or regulations?

(6) Have technology or economic conditions changes since these guides were issued, and, if so, what effect do the changes have on the guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Parts 229 and 232

Advertising, Civil defense, Fallout shelters, Radiation protection, Trade practices.

By direction of the Commission
Donald S. Clark,
Secretary.

Concurring Statement of Commissioner, Dennis A. Yao Concerning Commission Actions Pursuant to Commission Directive to Review All Regulations and Guides on a Recurring 10–Year Cycle

I dissented form the Commission's decision to schedule mandatory reviews of all regulations and guides on a recurring 10-year cycle because I was not persuaded that the Commission had sufficient information to show that the potential benefits from such a mandatory review process warranted diversion of resources from our positive enforcement agenda. A more flexible approach would have allowed the Commission, in my opinion, to identify

and modify or rescind potentially problematic rules or guides while balancing the costs and benefits of these reviews against those of our enforcement agenda. See Dissenting Statement of Commissioner Dennis A. Yao Concerning Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle.

Nevertheless, since the Commission did adopt the 10-year mandatory review process that I opposed, I am voting in favor of the current motion because it is consistent with the 10-year mandatory review process that is now Commission policy.

[FR Doc. 92–21953 Filed 9–10–92; 8:45 am]
BILLING CODE 6750–01–M

16 CFR Part 230

Request for Comments Concerning Guides for Advertising Shell Homes

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Guides for Advertising Shell Homes ("Shell Homes Guides"). The Commission is soliciting the comments as part of its periodic review of rules and guides.

DATES: Written comments will be accepted until October 13, 1992.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Shell Homes Guides should be identified a "16 CFR Part 230—Comment."

FOR FURTHER INFORMATION CONTRACT: Kent C. Howerton, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–3013.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recision. At this time, the Commission solicits written public comments concerning the Commission's guides for Advertising Shell Homes ("Shell Homes Guides"), 16 CFR part 230.

These guides, like the other industry guides issued by the Commission, "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission under applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Shell Homes Guides pertain to a type of factory-built home. The Guides state that "the typical shell homes does not include such features as wiring, plumbing, heating, interior trim and finish, or other requisite components." 16 CFR 230.1. In general, the Shell Homes Guides pertain to claims about the extent of completion of a shell home and its immediate habitability. The Guides also address representations as to size or dimensions, pictorial representations, savings claims, financial terms, bait advertising, guarantees, model homes, delivery and installation.

Accordingly, the Commission solicits public comments on the following questions:

(1) Have these guides had a significant economic impact (costs or benefits) on entities subject to their requirements?

(2) Is there a continuing need for these guides?

(3) What burdens does adherence with these guides place on entities subject to their requirements?

(4) What changes should be made to these guides to minimize the economic effect on such entities?

(5) Do these guides overlap or conflict with other federal, state, or local government laws or regulations?

(6) Have technology or economic conditions changed since these guides were issued, and, if so, what effect do the changes have on the guides?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 230

Advertising, housing, trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Dennis A. Yao Concerning Commission Actions Pursuant to Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle

I dissented from the Commission's decision to schedule mandatory reviews of all regulations and guides on a recurring 10-year cycle because I was not persuaded that the Commission had sufficient information to show that the potential benefits from such a mandatory review process warranted diversion of resources from our positive enforcement agenda. A more flexible approach would have allowed the Commission, in my opinion, to identify and modify or rescind potentially problematic rules or guides while balancing the costs and benefits of these reviews against those of our enforcement agenda. See Dissenting Statement of Commissioner Dennis A. Yoa Concerning Commission Directive to Review All Regulations and Guides on a Recurring 10-Year Cycle.

Nevertheless, since the Commission did adopt the 10-year mandatory review process that I opposed, I am voting in favor of the current motion because it is consistent with the 10-year mandatory review process that is now Commission policy.

[FR Doc. 92–21954 Filed 9–10–92; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0003–92]

RIN 1545–AQ58

Proposed Amendments to the Regulations on Branch Profits Tax and on Effectively Connected Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the determination of effectively connected income under section 864 and the branch profits tax and branch-level interest tax under section 884 of the Internal Revenue Code of 1986 (the "Code"). Section 884 was added to the Code by section 1241 of the Tax Reform Act of 1986. These

regulations would provide guidance needed to comply with this section and would affect certain foreign corporate partners of partnerships engaged in a U.S. trade or business and foreign corporate beneficiaries of certain trusts and estates. The regulations also provide guidance regarding the definition of "branch interest".

DATES: Comments and requests for a public hearing must be received by November 10, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0003–92) room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (202–622–3860, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP: Washington, DC 20224.

The collection of information in this regulation is in § 1.884–1(d)(3)(ii)(B). The information collection in that section is required by the Internal Revenue Service in order to assure compliance with changes to the regulations under section 884. The likely respondents are business corporations that are affected by such changes.

The following estimates are an approximation of the average time expected to be necessary for the collection of information required by these regulations. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 25 hours.

The estimated annual burden per respondent is .25 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: One.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 864 and 884 of the Internal Revenue Code of 1986. The amendments to section 884 are proposed to amend final regulations under §§ 1.884–0, 1.884–1, and 1.884–4 that appear in this issue of the **Federal Register** and temporary regulations under § 1.884–2T.

Explanation of the Provisions

Proposed Amendments to Section 864 Asset-Use Test

Section 1.864–4(c)(2)(i) provides that an asset-use test will ordinarily apply to determine if income, gain or loss of a passive type will be treated as income effectively connected for the taxable year with the conduct of a trade or business in the United States. Under the asset-use test, income, gain or loss from an asset will be effectively connected if the income, gain or loss is derived from assets used in, or held for use in, the conduct of the trade or business in the United States. Section 1.864–4(c)(2)(ii)(*a*) provides that an asset will be treated as used in, or held for use in, the conduct of a U.S. trade or business if it is held for the principal purpose of promoting the present conduct of the trade or business in the United States. The regulations provide as an example stock acquired and held to assure a constant source of supply for the trade or business. The proposed regulations delete that example and provide that stock is not treated as an asset used in, or held for use in, the conduct of a trade or business in the United States. The proposed regulations also eliminate the subsequent examples indicating that stock may be held in a direct relationship to a trade or business conducted in the United States. Comments are invited regarding the effect, if any, of this amendment on the treatment of income from stock portfolio investments of insurance companies.

Proposed Amendments to Section 884 Partnerships

Under the temporary and final regulations, a foreign corporate partner's interest in a partnership is treated as a U.S. asset in the same proportion that its distributive share of the partnership's gross income for the taxable year that is effectively connected with the conduct of a trade or business in the United States bears to its distributive share of all partnership gross income. The proposed regulations under § 1.884–4–1(d)(3) retain the rule in the final regulations for partners that have an interest of less than 10 percent in the capital, profits, and losses of the partnership at all times during the partner's taxable year.

With respect to a corporate partner with a 10 percent or more interest in the capital, profits or losses of a partnership, the proposed regulations change the method of apportioning the adjusted basis of its partnership interest between U.S. and non-U.S. assets from an income-based method to an asset based-method. If a partner has a substantially uniform economic interest in all the items of income, gain, loss, and deduction of the partnership, its partnership interest is treated as a U.S. asset in a proportion equal to the adjusted basis of the U.S. assets of the partnership over the adjusted basis of total assets of the partnership. If the partner does not have a substantially uniform economic interest in all such items of the partnership, the general rule is modified to take into account the partner's proportionate share of the adjusted basis of each asset held by the partnership. For example, if a foreign corporate partner is allocated all the items of income, gain, loss, and deduction with respect to one U.S. real property interest held by the partnership but no items with respect to another, in determining the extent to which the partner's interest in the partnership is a U.S. asset, the partner will take into account 100 percent of the adjusted basis of the one asset but none of the other, provided that the partnership allocations are valid under section 704(b). The rules also provide a set of presumptions to determine a partner's economic interest in a particular asset when its distributive share of the items of income, gain, loss or deduction generated by the asset is not substantially uniform. The asset-based method applicable to 10 percent or more partners may be elected by partners with less than a 10 percent interest in a partnership. The application of these rules to tiered partnerships is also set forth in this section of the regulations.

Trusts. Under the temporary and final regulations, a foreign corporation that is a beneficiary of a trust or estate is subject to the branch profits tax if it has effectively connected earnings and profits by virtue of its interest in the trust or estate. The temporary and final regulations reserve, however, on the issue of how to calculate the U.S. assets of a foreign corporation that is a beneficiary of a trust or estate. The proposed regulations under § 1.884–

1(d)(4) provide that a foreign corporate beneficiary of a trust will not be treated as owning a U.S. asset by virtue of its interest in a trust or estate, with one exception. If, under the rules of sections 671 through 678, a foreign corporation is required to include in computing its tax liability the income and gain with respect to a trust asset (or a pro rata portion of a trust asset), it will be treated as the owner of the trust asset (or pro rata portion thereof).

A special rule applies, however, upon the termination (by disposition or otherwise) of a foreign corporate beneficiary's interest in a trust, whether or not the foreign corporation continues to be engaged in another U.S. trade or business. The proposed regulations amend the temporary regulations by adding a provision that, notwithstanding § 1.884–2T(a), a foreign corporation whose beneficial interest in a trust terminates in any taxable year shall be subject to the branch profits tax on ECEP attributable to ECI distributed to such beneficiary in that taxable year.

Alternative approaches were considered that would have attributed to a corporate beneficiary a partial interest in the assets of the trust to the extent of the beneficiary's actuarial interest in each U.S. asset of the trust, following attribution principles similar to those in § 1.884–5(b)(2)(iii) (relating to attribution rules for stock held by trusts). This approach was not adopted because the amount of a U.S. asset attributed to a beneficiary based on its actuarial interest in the asset would not necessarily correspond to a beneficiary's share of earnings and profits attributable to the asset for the taxable year.

Another alternative would have been to allocate the E&P basis of the U.S. assets of a trust to a foreign corporate beneficiary of the trust in proportion to the beneficiary's share of gross income from the trust that is (or is treated as) effectively connected with the conduct of a trade or business in the United States to its share of total gross income of the trust. That alternative was also not adopted because, in the case of a discretionary trust, the amount of U.S. assets of the beneficiary could fluctuate dramatically from year to year.

Branch interest. The final regulations under § 1.884–4(b) define interest paid by a U.S. trade or business of a foreign corporation ("branch interest") to include interest paid with respect to certain liabilities set forth in that section. The proposed regulations under § 1.884–4(b) define branch interest as interest paid by a foreign corporation with respect to a liability that is a booked liability within the meaning of the proposed regulations under § 1.882–5(d)(2). This change and related conforming changes are being made to simplify to the extent possible the calculations a foreign corporation must make to comply with these sections.

Effective date. These regulations are proposed to be effective [the day that these regulations are published as final regulations in the **Federal Register**].

Special Analyses

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

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments (preferably a signed original and eight copies) that are received by the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time and place for a hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Elizabeth U. Karzon, of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.861–1 through 1.864–12

Income taxes, United States investments abroad.

26 CFR 1.881–1 through 1.884–5T

Foreign investments in United States, Income taxes.

Proposed Amendments to the Regulations

Accordingly, the final regulations under § 1.864–4, the final regulations under §§ 1.884–0, 1.884–1 and 1.884–4 published in this issue of the **Federal Register,** and the temporary regulations under § 1.884–2T(a) are proposed to be amended as follows:

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

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

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

Par. 2. Section 1.864–4 is amended as follows:

1. The third sentence in paragraph (c)(2)(i) is revised.

2. Paragraph (c)(2)(ii) is revised.

3. Paragraph (c)(2)(iv) is amended by:

a. Revising the paragraph heading and introductory text for paragraph (iv).

b. In *"Example (1)"* removing the designation *"(1)".*

c. Removing *Examples (2)* through *(5).*

4. paragraph (c)(2)(v) is added.

5. The revised and added provisions read as follows:

§ 1.864–4 U.S. source income effectively connected with U.S. business.

* * * * *

(c) * * *

(2) * * *

(i) * * * The asset-use test is of primary significance where, for example, interest income is derived from sources within the United States by a nonresident alien individual or foreign corporation that is engaged in the business of manufacturing or selling goods in the United States. * * *

(ii) *Cases where applicable.* Ordinarily, an asset shall be treated as used in, or held for use in, the conduct of a trade or business in the United States if the asset is—

(A) Held for the principal purpose of promoting the present conduct of a trade or business in the United States; or

(B) Acquired and held in the ordinary course of the trade or business conducted in the United States, as, for example, in the case of an account or note receivable arising from that trade or business; or

(C) Otherwise held in a direct relationship to the trade or business conducted in the United States, as determined under paragraph (c)(2)(iii) of this section. Stock of a corporation (whether domestic or foreign) is not treated as an asset used in, or held for

use in, the conduct of a trade or business in the United States.

* * * * *

(iv) *Illustration.* The application of this paragraph (c) may be illustrated by the following example:

Example. * * *

(v) *Effective date.* This paragraph (c)(2) will be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the* **Federal Register**.]

* * * * *

Par. 3. Section 1.884–0(b) is amended by revising the entries for §§ 1.884–1(d)(4) and 1.884–4(b) (1) and (2) and adding entries for 1.884–4(e) (1) and (2) to read as follows:

§ 1.884–0 Overview of regulation provisions for section 884.

* * * * *

(b) * * *

§ 1.884–1 Branch profits tax.

* * * * *

(d) * * *

(4) Interest in a trust or estate.

* * * * *

§ 1.884–4 Branch-level interest tax.

* * * * *

(b) * * *

(1) Definition of branch interest.

(2) [Reserved].

* * * * *

(e) * * *

(1) General rule.

(2) Special rule for branch interest.

* * * * *

Par. 4. Section 1.884–1 is amended as follows.

1. Paragraphs (d)(3) (i) through (iii) are revised to read as set forth below.

2. Paragraphs (d)(3) (vi) and (vii) are added to read as set forth below.

3. The text of paragraph (d)(4) is added to read as set forth below.

§ 1.884–1 Branch profits tax.

* * * * *

(d) * * *

(3) *Interest in a partnership*—(i) *Partners with 10 percent or greater interest in partnership*—(A) *10 percent or more partner.* For purposes of this paragraph (d)(3)(i), a "10 percent or more partner" is a partner with an interest of 10 percent or more (as determined under the attribution rules of section 318) in the capital, profits, or losses of a partnership at any time during the partner's taxable year.

(B) *Substantially uniform economic interest.* If a 10 percent or more partner in a partnership has a substantially uniform economic interest in all items of income, gain, loss, and deduction that may be generated by the assets of the partnership throughout the period that includes the taxable year of the foreign corporation, that partner's interest in the partnership shall be treated as a U.S. asset in the same proportion that the sum of the adjusted bases of all partnership assets as of the determination date, to the extent that the assets would be treated as U.S. assets if the partnership were a foreign corporation, bears to the sum of the adjusted bases of all partnership assets as of the determination date.

(C) *Economic interest not substantially uniform.* If a 10 percent or more partner does not have an interest in a partnership described in paragraph (d)(3)(i)(B) of this section, that partner's interest in the partnership shall be treated as a U.S. asset in the same proportion that the sum of the partner's proportionate share of the adjusted bases of all partnership assets as of the determination date, to the extent that the assets would be treated as U.S. assets if the partnership were a foreign corporation, bears to the sum of the partner's proportionate share of the adjusted bases of all partnership assets as of the determination date. A partner's proportionate share of the adjusted basis of a partnership asset shall be determined by reference to the partner's proportionate economic interest (reflected in the partnership agreement) in the items of income, gain, loss, and deduction that are expected to be generated by that asset. For purposes of this paragraph (d)(3)(i)(C), the following presumptions apply:

(*1*) If a partnership asset ordinarily generates directly identifiable income, a partner's proportionate share of the adjusted basis of the asset shall be presumed to equal the partner's proportionate share of gross income that may be generated by the asset for the partnership's taxable year ending with or within the partner's taxable year.

(*2*) If a partnership asset ordinarily generates current deductions and ordinarily generates no directly identifiable income, for example because the asset contributes equally to the generation of all the income of the partnership (such as an asset used in general and administrative functions), a partner's proportionate share of the adjusted basis of that asset shall be presumed to equal the partner's proportionate share of the total deductions that may be generated by the asset for the partnership's taxable year ending with or within the partner's taxable year.

(*3*) If a partnership asset ordinarily generates no income or deductions, a partner's proportionate share of the adjusted basis of that asset shall be presumed to equal the partner's proportionate share of the total gain to which that partner would be entitled if the asset were sold at a gain in the partnership's taxable year ending with or within the partner's taxable year.

A presumption described in this paragraph (d)(3)(i)(C) may be rebutted by the taxpayer or by the Service by showing that the presumption is inconsistent with the partner's true economic interest in the asset during the corporation's taxable year.

(ii) *Partners with less than 10 percent interest in partnership*—(A) *General rule.* If a partner is not a 10 percent or more partner in a partnership, that partner's interest in the partnership shall be treated as a U.S. asset in the same proportion that the partner's distributive share of partnership gross income for the partnership's taxable year that ends with or within the partner's taxable year that is ECI bears to its distributive share of all partnership gross income for that taxable year.

(B) *Election.* A foreign corporation that is a partner in a partnership may elect to apply the rules in paragraph (d)(3)(i) of this section rather than the rules of this paragraph (d)(3)(ii) with respect to an interest in any partnership in which it has a direct or indirect interest described in this paragraph (d)(3)(ii) by attaching a statement to its return for the taxable year stating that it elects to calculate its U.S. assets under the rules of paragraph (d)(3)(i) of this section. If a foreign corporation makes such an election with respect to a partnership interest, the election shall apply to the partnership interest for all subsequent taxable years in which the electing corporation has an interest in the partnership unless the Commissioner consents to a revocation of the election.

(C) *Special rule.* Where the Commissioner determines that the rules in this paragraph (d)(3)(ii) do not accurately reflect the U.S. assets that a foreign corporation with a partnership interest would have if the rules of paragraph (d)(3)(i) of this section applied (as, for example, if income from an asset held by the partnership is disproportionate to the adjusted basis of the asset or if the income from a partnership asset fluctuates substantially from year to year), the Commissioner may apply the rules of paragraph (d)(3)(i) of this section to such partnership interest.

(iii) *Tiered partnerships.* If an upper-tier partnership is a 10 percent or more partner in a lower-tier partnership, paragraph (d)(3)(i) of this section shall be applied to the assets of the lower-tier partnership to determine what proportion of the upper-tier

partnership's interest in the lower-tier partnership is a U.S. asset. If the upper-tier partnership is not a 10 percent or more partner in the lower-tier partnership, the rules of paragraph (d)(3)(ii) of this section shall apply to determine what proportion of the upper-tier partnership's interest in the lower-tier partnership is a U.S. asset.

* * * * *

(vi) The application of this paragraph (d)(3) is illustrated by the following examples.

Example 1. General rule—(i) *Facts.* Foreign corporation, FC, is a partner in partnership ABC, which is engaged in a trade or business within the United States. Assume FC and ABC are both calendar year taxpayers. ABC owns and manages two office buildings located in the United States, each with an adjusted basis of $50. ABC also owns a non-U.S. asset with an adjusted basis of $100. ABC has no liabilities. Under the partnership agreement, FC has a 50 percent interest in the capital of ABC and a 50 percent interest in all items of income, gain, loss, and deductions that may be generated by the partnership's assets.

(ii) *Results.* Because FC has a substantially uniform economic interest in all items of income, gain, loss or deduction of ABC as described in paragraph (d)(3)(i)(B) of this section, FC need not separately compute its proportionate share of the adjusted basis of each asset held by ABC to determine the proportion of its interest in ABC that is a U.S. asset. Rather, FC's interest in ABC is treated as a U.S. asset in the same proportion that the sum of the adjusted bases of all of ABC's assets, to the extent that they would be treated as U.S. assets if ABC were a foreign corporation ($100), bears to the sum of the adjusted bases of all of ABC's assets ($200). The proportion of FC's interest in ABC that is a U.S. asset is therefore 50 percent.

Example 2. Special allocation of gain with respect to real property—(i) *Facts.* Assume the same facts as in Example 1, except that under the partnership agreement, FC is allocated 20 percent of the gross income from the partnership property but 80 percent of the gain on disposition of the partnership property.

(ii) *Results.* Assuming that the buildings ordinarily generate directly identifiable income, there is a rebuttable presumption under paragraph (d)(3)(i)(C)(*1*) of this section that FC's proportionate share of the adjusted basis of the buildings is FC's distributive share of the gross income generated by the buildings (20%) rather than the total gain that it would be entitled to under the partnership agreement if the buildings were sold at a gain (80%). Thus, the sum of FC's share of the adjusted bases in ABC's U.S. assets (the buildings) is presumed to be $20 [(20% of $50)+(20% of $50)]. Assuming that the non-U.S. asset is not income-producing, there is a rebuttable presumption under paragraph (d)(3)(i)(C)(*3*) of this section that FC's proportionate share of the adjusted basis of that asset is FC's interest in the gain on the disposition of the asset (80%) rather its proportionate share of the gross income that may be generated by the asset (20%). Thus, FC's adjusted basis in ABC's non-U.S. asset is presumed to be $80 (80% of $100). FC's proportionate share of the adjusted basis in all of the assets of ABC will be $100 ($20+$80). The proportion of FC's interest in ABC that is treated as a U.S. asset is therefore 20 percent ($20 (the sum of FC's share of the adjusted basis of ABC's U.S. assets)/$100 (FC's share of the adjusted bases of all of ABC's assets)).

Example 3. Interest in a lower-tier partnership—(i) *Facts.* Assume the same facts as in *Example 1*, except that ABC has a 50 percent interest in the capital of partnership DEF. DEF owns and operates a commercial shopping center in the United States with an adjusted basis of $200 and also owns non-U.S. assets with an adjusted basis of $100. DEF has no liabilities. Assume that ABC's adjusted basis in its interest in DEF is $150 and that ABC has a 50 percent interest in all the items of income, gain, loss and deduction that may be generated by the assets of DEF.

(ii) *Results.* Because ABC has a 10 percent or greater interest in the capital, profits or losses of DEF, the rules of paragraph (d)(3)(i) of this section apply to determine what proportion of ABC's interest in DEF is a U.S. asset. Because ABC has a substantially uniform economic interest in the items of income, gain, loss, and deduction of DEF, ABC's interest in DEF is treated as a U.S. asset in the same proportion as the sum of the adjusted bases of all of DEF's assets, to the extent that they would be treated as U.S. assets if DEF were a foreign corporation ($200), bears to the sum of the adjusted bases of all of DEF's assets ($300). Thus, ABC's adjusted basis in DEF ($150) is treated in part as a U.S. asset with an adjusted basis of $100 ($150×$200/$300) and in part as a non-U.S. asset with an adjusted basis of $50 ($150×$100/$300). FC must then apply the rules of paragraph (d)(3)(i)(B) of this section to all the assets of ABC, including ABC's interest in DEF that is treated in part as a U.S. asset and in part as a non-U.S. asset. FC's interest in ABC is treated as a U.S. asset in the same proportion that the sum of the adjusted basis of the assets of ABC, to the extent that they would be treated as U.S. assets if held by FC directly (including ABC's interest in DEF), bears to the adjusted basis in all of ABC's assets. Thus, $200/$350 (or 57%) of FC's interest in ABC is treated as a U.S. asset, determined by adding the $100 aggregate adjusted bases of the U.S. assets that ABC holds directly to ABC's $100 adjusted basis in the portion of its interest in DEF that is treated as a U.S. asset and dividing the sum by $350 (the aggregate adjusted bases of ABC's assets (including ABC's interest in DEF).

(vii) *Effective date.* This paragraph (d)(3) shall be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the* **Federal Register**].

(4) *Interest in a trust or estate*—(i) *Estates and non-grantor trusts.* A foreign corporation that is a beneficiary of a trust or estate shall not be treated as having a U.S. asset by virtue of its interest in the trust or estate.

(ii) *Grantor trusts.* If, under sections 671 through 678, a foreign corporation is treated as owning a portion of a trust that includes all the income and gain that may be generated by a trust asset (or pro rata portion of a trust asset), the foreign corporation will be treated as owning the trust asset (or pro rata portion thereof) for purposes of determining its U.S. assets under this section.

(iii) *Effective date.* This paragraph (d)(4) shall be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the Federal Register*].

* * * * *

Par. 5. § 1.884–2T (a) is amended as follows:

1. Paragraph (a)(5) is redesignated as paragraph (a)(6).

2. New paragraph (a)(5) is added to read as set forth below.

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(a) * * *

(5) *Special rule if a foreign corporation terminates an interest in a trust.* A foreign corporation whose beneficial interest in a trust terminates (by disposition or otherwise) in any taxable year shall be subject to the branch profits tax on ECEP attributable to amounts (including distributions of accumulated income or gain) treated as ECI to such beneficiary in such taxable year notwithstanding any other provision of this paragraph (a). This paragraph (a)(5) shall be effective for taxable years beginning on or after [*the date that is 30 days after these regulations are published as final regulations in the Federal Register*].

* * * * *

Par. 6. Section 1.884–4 is amended as follows:

1. Paragraph (a)(2)(i)(B) is revised to read as set forth below.

2. Paragraph (a)(2)(i)(C) is removed.

3. In paragraph (a)(2)(ii), the reference to paragraph "(c)(3)" is removed and the language "(c)(2)" is added in its place.

4. Paragraph (a)(2)(iii) is revised.

5. In paragraph (a)(4), the references in *Examples 1* and *2* to paragraph "(b)(2)" are removed and the language "(a)(2)(iii)" is added in its place.

6. Paragraph (b)(1) is revised.

7. Paragraph (b)(2) is removed and reserved.

8. In paragraph (b)(3), the four references to paragraph "(b)(1)(v)" are

removed and the language "(b)(1)(ii)" is added in its place.

9. In paragraph (b)(6), the six references to paragraph "(b)(1)(v)" are moved and the language "(b)(1)(ii)" is added in its place; and (in paragraph (b)(6)(ii), the two references to paragraph "(b)(1)(i) through (iv)" is removed and the language "(b)(1)(i)" is added in its place.

10. Paragraph (b)(8)(v) is amended by removing the last sentence in that paragraph.

11. Paragraph (c)(2) is removed.

12. Paragraph (c)(3) is redesignated as paragraph (c)(2).

13. Paragraph (c)(4) is removed.

14. Paragraph (e) is amended as follows:

a. The text of paragraph (e) is designated as paragraph (e)(1), and paragraph heading for (e)(1) is added.

b. The first sentence of newly designated paragraph (e)(1) is revised.

15. New paragraph (e)(2) is added.

16. The revised, added and reserved provisions read as follows:

§ 1.884–4 Branch-level interest tax.

(a) * * *

(2) * * *

(i) * * *

(B) The foreign corporation's branch interest (as defined in paragraph (b) of this section) for the taxable year, but not including interest accruing in a taxable year beginning before January 1, 1987.

* * * * *

(iii) *Treatment of a portion of the excess interest of banks as interest on deposits.* A portion of the excess interest of a foreign corporation that maintains and operates a Federal branch, Federal agency, State branch or State agency (as those terms are defined in section 1(b) of the International Banking Act of 1978) shall be treated as interest on deposits (as described in section 871(i)(3)), and shall be exempt from the tax imposed by section 881(a) as provided in such section. The portion of the excess interest of the foreign corporation that is treated as interest on deposits shall equal the product of the foreign corporation's excess interest and the greater of—

(A) The ratio of the amount of interest-bearing deposits, within the meaning of section 871(i)(3)(A), of the foreign corporation as of the close of the taxable year to the amount of all interest-bearing liabilities of the foreign corporation on such date; or

(B) 85 percent.

* * * * *

(b) *Branch interest*—(1) *Definition of branch interest.* For purposes of this section, the term "branch interest" means interest paid by a foreign corporation with respect to a liability that is—

(i) A booked liability within the meaning of § 1.882–5(d)(2); or

(ii) In the case of a foreign corporation other than a corporation described in paragraph (a)(2)(iii) of this section, a liability specifically identified (as provided in paragraph (b)(3)(i) of this section) as a liability of a U.S. trade or business of the foreign corporation on or before the earlier of the date on which the first payment of interest is made with respect to the liability or the due date (including extensions) of the foreign corporation's income tax return for the taxable year, provided that—

(A) The amount of such interest does not exceed 85 percent of the amount of interest of the foreign corporation that would be excess interest before taking into account interest treated as branch interest by reason of this paragraph (b)(1)(ii);

(B) The requirements of paragraph (b)(3)(ii) of this section (relating to notification of recipient of interest) are satisfied; and

(C) The liability is not described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by foreign assets) or paragraph (b)(1)(i) of this section.

A foreign corporation may identify a liability under paragraph (b)(1)(ii) of this section whether or not the foreign corporation is engaged in the conduct of a trade or business in the United States. See paragraph (b)(5) of this section for special rules relating to branch interest of a foreign corporation whose U.S. assets equal 80 percent or more of its worldwide assets. See paragraph (b)(6) of this section for a limitation on the amount of branch interest in certain situations in which branch interest exceeds the amount of interest apportioned to ECI under § 1.882–5 and paragraph (b)(7) of this section for the treatment of interest that is paid and accrued in different taxable years.

(2) [Reserved].

* * * * *

(e) *Effective dates*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, this section is effective for taxable years beginning on October 13, 1992, and for payments of interest described in section 884(f)(1)(A) made (or treated as made under paragraph (b)(7) of this section) during taxable years of the payor beginning after such date. * * *

(2) *Special rule for branch interest.* The changes to paragraphs (a)(2)(i) (B) and (C), (a)(2) (ii) and (iii), (a)(4), (b)(1) through (b)(3), (b)(6), (b)(8)(v), (c)(2) through (c)(4) of this section will be effective for taxable years beginning on or after [*the date that these regulations are published as final regulations in the Federal Register.*]

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–21298 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Small Operators Assistance Program and Permit Application

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment expands the coverage of the Maryland Bureau of Mines (MDBOM) Small Operator Assistance Program (SOAP) by increasing the coal production eligibility limit from 100,000 to 300,000 tons. The amendment also separates the public notice and hearing process on the permit application from the public notice and hearing process on the reclamation plan.

This notice sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 13, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on October 6, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 28, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J.

Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

MDBOM submitted a program amendment to OSM on July 14, 1992. The amendment (Administrative Record Number MD–556.00) is a copy of the Maryland General Assembly's House of Delegates Bill Number 1284. The bill, non referenced as Chapter 609 of the 1992 laws of Maryland, revises Sections 7–205 and 7–505 and adds Section 7–206 to the Natural Resources Article, Annotated Code of Maryland.

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 which includes the Abandoned Mine Lands Reclamation (AML) Act of 1990, as amended. Section 6011 (Small Operator Assistance , of the AML Act of 1990 amends section 507(c) of SMCRA by increasing the SOAP coal eligibility limit for any surface coal mining operator from 100,000 tons to 300,000 tons. Revised Section 7–505(c)(4) includes a similar change.

Under the Maryland program, the Land Reclamation Committee (Committee) must approve the reclamation plan required in the permit application. MDBOM must approve, except for the reclamation plan, the permit application. The public notice and public hearing process for both the permit application and the reclamation plan is conducted jointly by MDBOM and the Committee under section 7–505(d). The amendment separates this notice and hearing process by deleting reference to the committee. The new section 7–206 sets out the Committee's public notice and hearing procedures for a permit applicant's reclamation plan. Section 7–206 also includes provisions concerning the Committee's bond release and reclamation responsibilities that were deleted from section 7–205.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendment proposed by Maryland satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 28, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these

standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et. seq.*

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–21906 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to standardize State reporting requirements for all wildlife affected by coal mining and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. October 13, 1992. If requested, a public hearing on the proposed amendment will be held on October 6, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

II. Proposed Amendment

By letter dated July 8, 1992, (Administrative Record No. WY–18–1) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. The Wyoming proposed amendment is at its own initiative.

The regulations that Wyoming proposes to amend are: Department of Environmental Quality, Land Quality Division Rules and Regulations Chapter II, Section 3(b)(iv)(B), Permit Applications—Special Application Content for Wildlife Monitoring; Chapter IV, Section 3(o)(iv), Environmental Protection Performance Standards—Special Environmental Protection—Wildlife Monitoring; and the addition of Appendix B—Wildlife Monitoring Requirements for Surface Coal Mining Operations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. September 28, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible,

notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-21907 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to clarify the unique differences in the State's revision, renewal, and amendment process, and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.d.t. October 13, 1992. If requested, a public hearing on the proposed amendment will be held on October 6, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on September 28, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777-7756.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78684). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

II. Proposed Amendment

By letter dated July 24, 1992, (Administrative Record No. WY-19-1) Wyoming submitted a proposed amendment to its program pursuant to SMCRA. The Wyoming proposed amendment is at its own initiative.

The regulations that Wyoming proposes to amend are: Department of Environmental Quality, Land Quality Division Rules and Regulations Chapter XIII, Section 6. Exception; Chapter I, Section 2(e) Definitions, (Amendments).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be

considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.d.t. September 28, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**." A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 11, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-21908 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Vendor Presort Software Validation Program

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: After receiving comments on its April 14, 1992, notice of proposed rulemaking (57 FR 12893–12901), the Postal Service has decided to withdraw the proposed rule on requirements for a Vendor Presort Software Validation Program.

DATES: This action is effective September 11, 1992.

ADDRESSES: Written questions should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5903.

FOR FURTHER INFORMATION CONTACT: Charles G. Delaney at (202) 268–5321 or George T. Hurst at (202) 268–5232.

SUPPLEMENTARY INFORMATION: After receiving written comments in response to its April 14, 1992, notice of proposed rulemaking (57 FR 12893–12901), and oral comments in response to its July 21, 1992, notice of public meeting (57 FR 32188), the Postal Service has decided to withdraw the previous proposed rule on requirements for a Vendor Presort Software Validation Program.

The Postal Service expects that a new proposed rule on this subject will be published in the **Federal Register** in the near future.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-21870 Filed 9-10-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS CA21-4-5569; FRL-4264-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State

Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on May 16, 1991 and the South Coast Air Quality Management District (SCAQMD) on March 1, 1991. The California Air Resources Board submitted these revisions to EPA on October 25, 1991. The revisions concern the adoption of SJUAPCD's Rule 468.1, Rubber Tire Manufacturing, and SCAQMD's 1104, Wood Flat Stock Coating Operations. These rules control the emissions of volatile organic compounds (VOCs) from their respective source categories. EPA has evaluated each of these rules and is proposing to approve them under section 110 (k)(3) as meeting the requirements of section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA).

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711

South Coast Air Quality Management District, Planning & Rules Division, P.O. Box 4939, Diamond Bar, CA 91765–0939.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Northern California, Nevada and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the South Coast Air Quality Management District and the following eight Air Pollution Control Districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1992, California requested under § 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit correction of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, the Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. SCAQMD is classified as extreme and SJVUAPCD is classified as serious. Therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5]

The State of California submitted many revised RACT rules for incorporation into its SIP on October 25, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SJVUAPCD's Rule 468.1, Rubber Tire Manufacturing and SCAQMD's Rule 1104, Wood Flat Stock Coating Operations. These submitted rules were found to be complete on December 18, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 Appendix V,[6] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs, which contribute to the production of ground level ozone and smog. The rules were adopted as part of the districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these two rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements,

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[1] At that time, Kern County included portions of two air basins: The San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982.

[3] Among other things, the pre-amended guidance consists of those portions of the proposed Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The South Coast and the San Joaquin Valley Air Basins retained their nonattainment designations and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the Amendments. See 56 FR 56694 (November 6, 1991).

[5] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See sections 107(d) and 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included *all* of Kern County. The substantive requirements of the SIP-Call are the same as those of the Statutory RACT fix-up requirement.

[6] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific sources categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SJVUAPCD's Rule 468.1 is entitled, "Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires", (EPA document No. EPA–450/2–Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires", (EPA document No. EPA–450/2–78–030). The CTG applicable to SCAQMD's Rule 1104 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VII: Factory Surface Coating of Flat Wood Paneling", (EPA document No. EPA–450–/2–78–032). Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD Rule 468.1, Rubber Tire Manufacturing

SJVUAPCD Rule 468.1 is a revision of Kings County Air Pollution Control District Rule 424 and will serve as a new rule (for all of the eight districts that were combined to form SJVUAPCD) adopted to control volatile organic compound emissions from rubber tire manufacturing operations. Proposed Rule 468.1 is a new SIP rule that will strengthen the SIP through meeting the requirements of the CAA, EPA regulations, and EPA policy. The rule controls VOC emissions from the following four areas in rubber tire manufacturing: (1) Undertread cementing operations; (2) green tire coating operations; (3) bead cementing operations; and (4) tread end cementing operations.

SCAQMD Rule 1104, Wood Flat Stock Coating Operations

SCAQMD Rule 1104 is a revision of the current SIP approved rule. The rule will have a strengthening effect on the SIP through increasing enforceability and clarity and is consistent with the CAA, EPA regulations, and EPA policy. The revisions generally include:

- Various definitional changes and additions;
- A reduction in the VOC limit for inks;
- Limiting VOC content for exterior wood siding coating;
- Deleting the equivalency provisions;
- Adding application method requirements for coatings, adhesives, and inks;
- Increasing add-on control device efficiency specifications;
- Adding efficiency requirements for the collection system;
- Adding recordkeeping requirements;
- Adding test methods; and
- Revising the exemption provisions.

EPA's technical support documents provide a more detailed discussion of the revisions to both SJVUAPCD Rule 468.1 and SCAQMD Rule 1104.

EPA has evaluated the two submitted rules for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct the deficiencies previously identified by EPA. These deficiency corrections have resulted in clearer, more enforceable rules. Therefore, SJVUAPCD's Rule 468.1 and SCAQMD's Rule 1104 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

This action has not been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 2, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–21964 Filed 9–10–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 13

[FO Docket No. 92–206; FCC 394]

Privatization of Examinations for Commercial Radio Operator Licenses and Clarification of Certain Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to delegate its authority to test applicants for commercial radio

operator licenses to one or more private entities. The rule changes would implement the Amendment to the Communications Act authorizing the Commission to delegate this function. The proposal is seen as necessary because resource constraints prevent the Agency from offering any more than two examination opportunities each year at 25 local offices. With advent of a new class of commercial radio operator license, the Global Maritime Distress and Safety System (GMDSS) license, the number of requests for examinations is expected to increase greatly. Other changes are intended to clarify existing application processing procedures.

DATES: Comments must be submitted on or before October 13, 1992, and reply comments on or before October 26, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ana J. Curtis, Field Operations Bureau, (202) 632–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in FO Docket No. 92–206, adopted August 21, 1992 and released on September 8, 1992. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch [room 230], 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's Copy Center, at (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–21911 Filed 9–10–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–202 RM–8051]

Radio Broadcasting Services; Newberry Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Hills Broadcasting, seeking the allotment of FM Channel 247A to Newberry Springs, California, as that community's first local aural transmission service. Coordinates for this proposal are 34–51–00 and 116–40–42. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before October 26, 1992, and reply comments on or before November 10, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–202, adopted August 19, 1992, and released September 3, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–21845 Filed 9–10–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–205, RM–8059 DA 92–1150]

Radio Broadcasting Services; Belle Plaine, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cynthia A. Siragusa seeking the substitution of Channel 238C3 for Channel 238A at Belle Plaine, Iowa, and the modification of her construction permit (BPH–910905MB) to specify the higher class channel. Channel 238C3 can be allotted to Belle Plaine in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.8 kilometers (10.4 miles) south to avoid a short-spacing to Station KQMG–FM, Channel 237A, Independence, Iowa, and to accommodate petitioner's desired site restriction, at coordinates North Latitude 41–45–00 and West Longitude 92–19–00. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 238C3 at Belle Plaine or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 26, 1992, and reply comments on or before November 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Denise B. Moline, Esq., Allen, Moline & Harold, 10500 Battleview Parkway, suite 200, P.O. Box 2126, Manassas, Virginia 22110 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–205, adopted August 20, 1992, and released September 3, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.1415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–21912 Filed 9–10–92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 177
Friday, September 11, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION MEETING

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, September 18, 1992. The meeting will be held in the Ballroom, 106th Floor, at the Windows On The World, One World Trade Center, New York City, New York, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Implementation of the Theme: Federal Property Management and Historic Preservation in the Local Community
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202–786–0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: September 4, 1992.

Robert D. Bush,

Executive Director.

[FR Doc. 92–21876 Filed 9–10–92; 8:45 am]
BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 4, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Animal and Plant Health Inspection Service, Expedited Review Requested, National Animal Health Monitoring System (NAHMS), NAHMS 18, 19, 20, 21, 22, 23, 24, 25, Monthly, Farms; 10,300 responses; 8280 hours, David Cummings (303) 490–7895.

• Agricultural Research Service, Patent License Application, AD–761, On occasion, Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small Businesses or organizations; 150 responses; 450 hours, M. Ann Whitehead (301) 504–6786.

• Agricultural Stabilization and Conservation Service, 7 CFR Part 12, 718, 1492, 1404, 720.2, and 1497—Addendum AD–1026, 1026B, 1026C, 1026U/CCC–502, 1068, 1069, 1026A, Supplement; ASCS–578, 492, 211, 211–1; CCC–21, 36, 37, 251, 252, On occasion; Annually, Individuals or households; Farms; Small businesses or organizations; 5,747,538 responses; 2,024,723 hours, Lavonne Maas (202) 720–8128.

Extension

• Agricultural Stabilization and Conservation Service, 7 CFR part 702, Colorado River Basin Salinity Control Program, Regulations, CRSC–1, CRSC–2, CRSC–3, On occasion, Farms; 248 responses; 85 hours, Roberts Harris (202) 720–8774

New Collection

• National Agricultural Statistics Service, Expedited Review Requested, Water Quality/Environmental Survey Program, On occasion, Farms; Businesses or other for-profit; 3,515 responses; 2,956 hours, Larry Gambrell (202)720–5778.

• Food and Nutrition Service, The WIC Dynamics Study, One time only, State or local governments; Non-profit institutions; 804 responses; 768 hours, Denise Thomas (703) 305–2133.

• Rural Electrification Administration, Borrower Investments—Telephone Loan Program, On occasion, Small businesses or organizations; 240 responses; 760 hours, Jon Claffey (202) 720–9539.

Reinstatement

• Soil Conservation Service, Conservation Plan of Operations, SCS–LTP–011, SCS–LTP–11A, SCS–LTP–11B, SCS–LTP–012, Recordkeeping; On occasion; Annually, Individuals or households; Farms; 300,000 responses; 53,750 hours, Bobby E. Rakestraw (202) 720–1866.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92–21972 Filed 9–10–92; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 92-145-1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the Untied States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS's review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
92-164-01	DeKalb Plant Genetics.	08-10-92	Corn plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) for tolerance to the herbicide glyphosate.	Hawaii.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 8th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21975 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-144-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant

Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-230-01	Pioneer Hi-Bred International, Incorporated	8-17-92	Soybean plants genetically engineered to express the coat protein gene from soybean mosaic virus (SMV) for resistance to SMV.	Puerto Rico.
92-232-01	Monsanto Agricultural Company	8-19-92	Soybean plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects.	Puerto Rico.

Done in Washington, DC, this 8th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21974 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-134-1]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Idaho Room of the University Park Holiday Inn, Ft. Collins, Colorado 50526, (303) 482-2626, September 22 through September 24, 1992. Sessions will be held on September 22 from 1 p.m. to 5 p.m.; on September 23 from 8 a.m. to 5 p.m.; and on September 24 from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wadleigh, Acting Director, Operational Support Staff, ADC, APHIS, USDA, room 821, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, (301) 436-8281.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Tentative topics for discussion at the upcoming meeting include, among other things, the expectations of the Committee during its 1992-1994 term, distribution of Federal ADC funds to the States, review of ADC's "futuring" efforts, research prioritization and adequacy of ADC research, and the 1080 Livestock Protection Collar. The Committee will also develop recommendations and prepare comments on the results of the topics presented at the meeting.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. Richard Wadleigh at the address listed under "*FOR FURTHER INFORMATION CONTACT*," or may be filed at the meeting. Please refer to Docket No. 92-134-1 when submitting your statements.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

Done in Washington, DC, this 8th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-21973 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption From Appeal, Hot Horse Timber Salvage Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest, insect baiting and trapping, and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Hot Horse project area, Boise and Idaho City Ranger Districts, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Terry Sexton, Resource Assistant, Idaho City Ranger District, Boise National Forest, P.O. Box 129, Idaho City, Idaho 83631, Telephone: 208-364-4330.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir beetle, mountain pine beetle and Douglas-fir tussock moth populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Boise and Idaho City Ranger District personnel have developed a proposal to harvest dead and dying timber, bait and trap insects, and reforest damaged acres. The Forest Service has completed the Hot Horse Timber Salvage Environmental Assessment (EA), identified issues, developed alternatives, and analyzed the affects of implementing timber salvage and other recovery activities.

The analysis area for the Hot Horse Timber Salvage EA is located 24 miles east of Idaho City, Idaho. The Forest will salvage dead and dying trees scattered throughout the 38,000-acre project area and recover approximately 8 MMBF. The Hot Horse project will harvest only dead and dying trees using helicopter, tractor and jammer logging systems. Cutting areas average less than 5 acres in size and will not exceed 20 acres. Cutover areas greater than 5

acres will be replanted, and smaller areas may be replanted depending on accessibility. Natural regeneration will be used to reforest smaller areas. Forest personnel will also bait and trap insects within the project area to help break up breeding cycles and reduce future insect populations. There is no road construction proposed for the salvage operations.

Management direction for the Hot Horse project area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project areas. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action fro the Hot Horse project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting, baiting/trapping and reforestation will not control the epidemic, these activities will: (1) Recover valuable timber that would otherwise deteriorate, (2) help break up insect breeding cycles, and (3) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through the timber salvage operations, breeding insects (principally bark beetles) can be removed in the logs and Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Hot Horse project will be implemented after publication of this notice in the **Federal Register.** If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely the salvage harvest could not be implemented during the 1992 normal operating season. This would result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $700,000. Of this, approximately $175,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to one-fourth of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Hot Horse Salvage and Recovery Project, Boise and Idaho City Ranger Districts, Boise National Forest, from appeal. The EA discloses the affects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 4, 1992.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 92–21916 Filed 9–10–92; 8:45 am]

BILLING CODE 3410–11–M

OSO/Canoncito Timber Sale; Santa Fe National Forest; Santa Fe County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to disclose effects of alternative plans for harvesting timber, and/or prescribed burning and tree planting, road construction, reconstruction and obliteration.

DATES: Written comments concerning the scope of the analysis, the issues, or the alternatives should be received on or before October 30, 1992.

ADDRESSES: Send written comments to Lori D. Osterstock, District Ranger, P.O. Drawer R. Espanola, NM 87532.

FOR FURTHER INFORMATION CONTACT: John Bruin, Project Coordinator, Espanola Ranger District. (505) 753–7331.

RESPONSIBLE OFFICIAL: Alan S. Defler, Forest Supervisor, Santa Fe National Forest.

SUPPLEMENTARY INFORMATION: The proposed project will be in compliance with the Forest Plan which provides the overall guidance for management of the area. The site-specific environmental analysis provided by the EIS will assist the Forest Supervisor in determining which land management activities should be implemented. Alternative development plans will be carefully examined for their potential impacts on the physical, biological, and social environments so their tradeoffs are apparent to the public and the Forest Supervisor.

Public participation will be fully incorporated into preparation of the EIS. The first step is the scoping process during which the Forest Service seeks information, comments, and assistance from Federal, State, and local agencies, and other individuals or groups who may be interested or affected by the proposed action. This information will be used in preparing a Draft EIS. Scoping includes: inviting participation, determining the project's scope and potential issues, and eliminating from detailed study those issues which are not significant. The public is also invited to participate in developing alternatives, and identifying and reviewing the potential environmental effects of the proposed action and its alternatives.

The Forest Service predicts the Draft EIS will be filed in the spring of 1993 and the Final EIS in the summer of 1993. The comment period on the Draft EIS will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankeee Nuclear Power Corp* v. *NRDC, 435 U.S., 519, 553 (1978).* Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts, *City of Angoon* v. *Hodel, 803 F.2d 1016m 1022 (9th Cir, 1986,* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis 1980).*

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60 day comment period on the Draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments after to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: September 2, 1992.

Alan S. Defler/Jose Martinez,

Deputy Forest Supervisor.

[FR Doc. 92-21836 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Kennett Square, Pennsylvania, September 25 and 26, 1992, 8:30 a.m. to 4:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Committee to begin development of the National Urban and Community Forestry Action Plan and develop criteria for the urban and community forestry challenge cost-share program. William Kruidenier of the International Society of Arboriculture will Chair this meeting which is open to the public. However, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring urban and community forestry matters to the attention of the Committee may file written statements with the Committee before or after the meeting.

DATES: The meeting will be held September 25 and September 26, 1992.

ADDRESSES: The meeting will be held at Longwood Gardens Incorporated, P.O. Box 501, Kennett Square, Pennsylvania 19348-0501, September 25 and 26, 1992.

Send written statements to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090-6090, or phone (202) 205-1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff, (202) 205-1689.

Dated: September 3, 1992.

Allan J. West,

Deputy Chief, State and Private Forestry.

[FR Doc. 92-21844 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

Rocky Mountain Region; Fee Schedule For Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Rocky Mountain Regional Forester had modified the fee schedule for communications uses authorized on National Forest System lands located in the States of Colorado, Wyoming, Nebraska, Kansas, and South Dakota.

ADDRESSES: Copies of the schedule may be obtained by writing to the Regional Forester, Rocky Mountain Region, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, CO 80225-0127.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Ben Wallingford, Lands Staff, Forest Service, Rocky Mountain Region, 11177 West 8th Ave., Box 25127, Lakewood, CO 80225-0127, (303) 236-9511.

SUPPLEMENTARY INFORMATION: On August 23, 1989, the Regional Forester for the Rocky Mountain Region published a notice of adoption of fee schedule for communication uses (54 FR No. 162, pages 35027 to 35030). Congress delayed implementation of the fee schedule and directed the Forest Service to review and report to the Appropriation Committee on the ability of the fee schedule to reflect values associated with local market conditions. The report was completed and sent to the Appropriations Committee in March of 1991. The fee schedule modifications are based on the findings of the report to Congress and additional administrative review. Most of the modifications either reduce the fees adopted in 1989, or require appraisals or other sound business management principles be used to establish fees. The modified fee schedule reflects the fair market value of the authorized use as required by the Federal Land Policy and Management Act.

Dated: September 3, 1992.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 92-21919 Filed 9-10-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than September 30, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping duty proceedings	Period
Argentina: Silicon Metal (A-357-804).	03/29/91-08/31/92
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057).	09/01/91-08/31/92
Canada: Steel Jacks (A-122-006)	09/01/91-08/31/92
Canada: Steel Rail (A-122-804)	09/01/91-08/31/92
Hong Kong: Sweaters of Man-Made Fibers (A-582-802)	09/01/91-08/31/92
Italy: Pads for Woodwind Instruments Keys (A-475-017)	09/01/91-08/31/92
Japan: Active Matrix LCD FPDs (A-588-817)	02/21/91-08/31/92
Japan: Electroluminescent FPDs (A-588-817)	02/21/91-08/31/92
Japan: Filament Fabric (A-588-607)	09/01/91-08/31/92
Korea: Sweaters of Man-Made Fibers (A-580-806)	09/01/91-08/31/92
Taiwan: Chrome-Plated Lug Nuts (A-583-810)	04/18/91-08/31/92
Taiwan: Sweaters of Man-made Fibers (A-583-808)	09/01/91-08/31/92
The Federal Republic of Germany: Certain Forged Steel Crankshafts (A-428-604)	09/01/91-08/31/92
The People's Republic of China: Chrome-Plated Lug Nuts (A-570-808)	04/18/91-08/31/92
The People's Republic of China: Greige Polyester/Cotton Printcloth (A-570-504)	09/01/91-08/31/92
The United Kingdom: Certain Forged Steel Crankshafts (A-412-602)	09/01/91-08/31/92
Countervailing Duty Proceedings	
Argentina: Certain Welded-Carbon Steel Pipe and Tube Products (C-357-801)	01/01/01-12/31/91
Canada: New Steel Rail, Except Light Rail (C-122-805)	01/01/91-12/31/91
Israel: Fresh Cut Roses (C-508-064)	10/01/90-09/30/91
New Zealand: Lamb Meat (C-614-503)	04/01/91-03/31/92

Antidumping duty proceedings	Period
New Zealand: Steel Wire (C–614–601)	07/01/91–06/30/92
Thailand: Steel Wire Rope (C–549–806)	09/11/91–12/31/91

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 or 355.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by September 30, 1992.

If the Department does not receive, by September 30, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: September 3, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–21877 Filed 9–10–92; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

[Docket No. 920925–2225]

Waiver of Cost-Share Requirements for Minority Business Development Centers Whose Clients Are Located in Hurricane Andrew Disaster Areas and, in the Future, Other Areas Determined by the President to be Major Disaster Areas

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) will waive cost-share requirements for Minority Business Development Centers (MBDCs) which service clients located in areas declared to be major disaster areas by the President as a result of Hurricane Andrew. In addition, in the future, MBDA will make a determination on a case-by-case basis regarding the waiver of cost-share requirements for clients located in other areas declared to be major disaster areas by the President.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bharat Bhargava, Associate Director For Operations, Minority Business Development Agency, U.S. Department of Commerce, Washington, DC 20230 (202) 377–8015.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, the MBDA provides business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned or controlled by such individuals. To deliver this assistance, MBDA funds MBDCs which offer a full range of management and technical assistance services, coordinate public and private resources on behalf of clients, and serve as a conduit for information concerning business development.

The funding instrument for the MBDCs is a cooperative agreement, which requires the MBDCs to contribute at least 15 percent of the total project cost. Contributions which may be utilized in satisfying the cost-share requirement include client fees, in-kind contributions and cash contributions.

Client fees consist of fees assessed by the MBDCs for management and technical assistance services rendered. These fees are set at a percentage of the total cost of the services rendered. Based on a standard hourly rate of $50.00, MBDCs charge client fees at 20 percent of the total cost for entities with gross sales of $500,000 or less and 35 percent of the cost for firms with gross sales of over $500,000.

The Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) defines a major disaster as any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

Two recent catastrophes, Hurricane Andrew and the civil disturbances in the Los Angeles area in May 1992, have been declared by the President as major disasters. Minority businesses in the areas of these disasters have an urgent need for management and technical assistance in packaging disaster/emergency loan applications, revising business plans, and other matters. Further, because of the disruption to their normal business operations caused by these disasters, many of these MBDC clients will be incapable of paying fees for services assessed by the MBDCS.

MBDA waived fee cost-share requirements for MBDCs assisting clients affected by the civil disturbances in Los Angeles (57 FR 20468). Based on this experience, MBDA has determined that the efficient provision of assistance to minority businesses located in the Hurricane Andrew disaster area will also be greatly facilitated by the waiver of fees normally assessed for management and technical assistance services. Accordingly, MBDA will instruct MBDCs assisting clients located in areas determined by the President to be major disaster areas as a result of Hurricane Andrew to waive the fees they normally would charge.

In the future, it may also be appropriate, in some instances, to waive fees for clients located in other areas determined by the President to be major disaster areas. Accordingly, MBDA will make a determination regarding the waiver of fees on a case-by-case basis.

Under current MBDA policy, the 15 percent minimum cost-share would remain applicable even if a substantial portion of it would have come from fees now waived. In light of the reduction in revenues resulting from the fee waivers and as a matter of equity to the MBDCs, where client fees are waived, MBDA is

revising its policy and will waive the 15 percent cost-share requirement as applicable to the portion of funds expended in assisting clients located in major disaster areas.

Executive Order 12291

MBDA has determined that this notice of policy revision is not a major rule within the meaning of section 1(b) of Executive Order 12291.

Administrative Procedure Act

Since this notice of policy revision is a matter relating to public property, loans, grants, benefits, or contracts, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) the requirements of section 553 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility act does not apply to this notice of policy revision because the notice was not required to be promulgated as a proposed rule before issuance in final form by section 553 of the Administrative Procedure Act or by any other law. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This policy statement does not contain an information collection requirement for purposes of the Paperwork Reduction Act.

Executive Order 12612

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

Authority: 15 U.S.C. 1512; Executive Order 11625 (36 FR 19967 (1971); Executive Order 12432 (48 FR 32551) (1983).

Policy Statement

Many minority businesses located in areas determined by the President to be major disaster areas under the Disaster Relief and Emergency Assistance Act as a result of Hurricane Andrew have an urgent need for management and technical assistance in packaging disaster/emergency loan applications, revising business plans, and other matters.

Because of the disruption to their normal business operations caused by the hurricane, many of these clients of Minority Business Development Centers (MBDCs) will be incapable of paying fees assessed by these MBDCs.

MBDA has determined that the efficient provision of assistance to businesses located in the Hurricane Andrew disaster area will be greatly facilitated by the waiver of fees normally assessed by MBDCs for management and technical assistance services. Accordingly, MBDA will instruct MBDCs assisting clients located in areas declared by the President to be major disaster areas as a result of Hurricane Andrew to waive the fee they normally would charge.

In the future, it may also be appropriate, in some instances, to waive fees for clients located in other areas declared by the President to be major disaster areas. MBDA will make a determination regarding waiver of fees on a case-by-case-basis.

In light of the reduction in revenues resulting from the fee waivers and as a matter of equity to the MBDCs, where client fees are waived, MBDA will waive the 15 percent cost-share requirement as applicable to the portion of funds expended in assisting clients located in areas determined by the President to be major disaster areas.

The waivers described above will remain in effect for one year after implementation. MBDA will review the situation after the expiration of the one-year period to determine whether continued waivers are warranted.

Dated: September 4, 1992.

William H. Bailey,

Acting Director, Minority Business Development Agency.

[FR Doc. 92-21900 Filed 9-8-92; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 920801-2201]

RIN 0693-AB09

Proposed Reaffirmation of Federal Information Processing Standard (FIPS) 46-1, Data Encryption Standard (DES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Federal Information Processing Standard 46, Data Encryption Standard, issued in 1977, provides an algorithm to be implemented in electronic hardware devices and used for the cryptographic protection of computer data. The standard provided that it be reviewed within five (5) years to assess its adequacy. The first review was completed in 1983, and the standard was reaffirmed for Federal government use (48 FR 41062 dated September 13, 1983). The second review was completed in 1987, and the standard was reaffirmed for Federal government use (52 FR 7006).

The purpose of this notice is to announce the review to assess the continued adequacy of the standard to protect computer data. Comments from industry and the public are invited on the following alternatives for FIPS 46-1. The costs (impacts) and benefits of these alternatives should be included in the comments:

—Reaffirm the standard for another five (5) years. The National Institute of Standards and Technology would continue to validate equipment that implements the standard. FIPS 46-1 would continue to be the only approved method for protecting unclassified computer data.

—Withdraw the standard. The National Institute of Standards and Technology would no longer continue to support the standard. Organizations could continue to utilize existing equipment that implements the standard. Other standards could be issued by NIST as a replacement for the DES.

—Revise the applicability and/or implementation statements of the standard. Such revisions could include changing the standard to allow the use of implementations of the DES in software as well as hardware; to allow the iterative use of the DES in specific applications; to allow the use of alternative algorithms that are approved and registered by NIST.

Interested parties may obtain a copy of FIPS 46-1 from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650.

DATES: Comments on this review of FIPS 46-1 must be received on or before December 10, 1992.

ADDRESSES: Written comments concerning this standard should be sent to: Director, Computer Systems Laboratory, ATTN: Review of FIPS 46-1, Technology Building, room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Miles Smid (301-975-2938) or Donna F. Dodson (301-975-2921), National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: September 4, 1992.

John W Lyons,

Director.

[FR Doc. 92-21998 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Mobil Exploration & Producing U.S. Inc. From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal and request for comments.

On April 29, 1992, Mobil Exploration & Producing U.S. Inc. (Appellant), through counsel, filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, Subpart H. The appeal is taken from an objection by the State of Florida (State) to the Appellant's consistency certification for a Supplemental Plan of Exploration to conduct oil and gas drilling activities on the Outer Continental Shelf at Pensacola Area Blocks 845, 846, 889, 890, 933 and 934, (Leases OCS-G 10401, 10402, 10406, 10407, 10411, and 10412), located between 10 and 20 miles offshore Pensacola, Florida.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisifies the requirements of 15 CFR 930.121 or § 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. Comments are due within 30 days of the publication of this notice and should be sent to Mary O'Donnell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington DC 20235. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the Florida Department of Environmental Regulation and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Mary O'Donnell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 606-4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: September 4, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92-21931 Filed 9-10-92; 8:45 am]

BILLING CODE 3510-08-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council (Council) and its Committees (Committee) will hold public meetings on September 16-17, 1992, at the Nonantum Resort, Ocean Avenue, Kennebunkport, MA, telephone: 207-967-4050. The meeting will begin at 10 a.m. on September 16, and reconvene at 9 a.m. on September 17.

The Council meeting will begin on September 16 with introductions and announcements, followed by a Lobster Oversight Committee report. The Committee report will concern the most recent stock assessment relative to the Council's definition of overfishing for American lobster and a review of the impacts of a five-inch maximum carapace length. The Herring Committee will report on a joint meeting with the Atlantic States Marine Fisheries Commission (ASMFC) Herring Board. A joint New England Council/ASMFC Herring Plan is currently under development. Areas for discussion will include the initial draft of the management program, plan objectives and a definition of overfishing. The Atlantic Sea Scallop Committee will update the Council on its efforts to finalize Amendment #4 to the Sea Scallop Fishery Management Plan (FMP).

After a break for lunch the Council will hear brief reports from the Council Chairman, Council Executive Director, National Marine Fisheries Service (NMFS) Regional Director, Northeast Fisheries Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Department of State, Coast Guard, Fish and Wildlife Service, and ASMFC. The Interspecies Committee will report before the meeting adjourns on September 16. The discussion will focus on moratoria, whether a single overall moratorium or individual moratoria for each fishery should be considered and other criteria that might be considered.

On September 17, the Council meeting will begin at 9 a.m. with a presentation from Mr. Richard Stone of NMFS on the agency's plans to develop FMPs for highly migratory species under the Atlantic Tunas Convention and Magnuson Fishery Conservation and Management Acts.

Following that presentation, the joint New England/Mid-Atlantic Fishery Management Council Monkfish Committee will review the direction discussed by the committee to resolve gear conflicts between fishermen in waters greater than 100 fathoms. They also will discuss the development of conversation measures to be included in a Monkfish FMP or in a future amendment to other existing FMPs.

Before closing the meeting after a discussion of other business, the Groundfish Committee will report to the Council. It will outline progress to date

on draft measures under consideration for inclusion in Amendment #5 to the Northeast Multispecies Fishery Management Plan. The full Council will have an opportunity to review and comment on the measures at the meeting.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–21874 Filed 9–10–92; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council (Council) will hold its 78th meeting on September 22–23, 1992, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI. The meeting will begin at 8 a.m. on both days. The Council's Standing Committees will also meet on September 21 at the same location as the Council.

The Council agenda is as follows: Hear reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii, and the Northern Mariana Islands; discuss the status of fishery management plans for crustaceans, bottomfish/seamount groundfish, precious corals and pelagic species; and hear reports from Council Standing Committees (i.e., Fishery Rights of Indigenous People, Enforcement, Executive, Budget and Program, Crustaceans, Bottomfish/Seamount Groundfish, Precious Corals and Pelagics).

The Council will also discuss and take action, as appropriate, on the following:

Crustaceans: (1) Status of Northwestern Hawaiian Islands (NWHI) lobster fishery and the 1992 final quota; (2) monitoring and closing the fishery; and (3) consistency between Federal and State of Hawaii lobster regulations.

Bottomfish: (1) Status of pending actions; (2) report and recommendations of the Bottomfish Advisory Panel/ Bottomfish Advisory Review Board joint meeting; (3) limited entry for Northwestern Hawaiian Islands Mau Zone (NWHIMZ); and (4) NWHI limited entry permit transferability.

Precious Corals: The need to maintain a Fishery Management Plan.

Pelagics: (1) Status of fisheries; (2) status of pending actions; (3) receive Advisory Panel report and recommendations; (4) future of Hawaii longline moratorium; (5) longline limited entry permit transferability; and (6) the need for new Endangered Species Act consultation for longline/turtles.

Other: (1) Global Surface Velocity programme; (2) data collection initiatives; (3) Guam fishery issues and program plan; (4) Billfish and tuna research and management; (5) fishery rights of indigenous people; (6) administrative matters; and (7) other business.

The Council will take comments from the public during its meeting. The public may also comment in writing to the address listed below.

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368; fax: (808) 526–0824.

Dated: September 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–21875 Filed 9–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Denial of Scientific Research Permit (P462D).

On May 26, 1992, notice was published in the **Federal Register** (57 FR 21966) that an application had been filed by Ervin and Sonja Strong, Researchers and Owners, The Dolphin Connection, 315 Bridgeport Ave., Suite 4, Corpus Christi, TX 78402, to conduct scientific research activities on up to fifty (50) Atlantic bottlenose dolphins (*Tursiops truncatus*) in the Corpus Christi, TX, area over a five-year period. The activities would include: Accumulation of data to determine whether conditioning free-ranging dolphins to approach boats, to be fed by paying passengers aboard their commercial tour boats, constitutes a threat to the well-being of the dolphins involved.

Notice is hereby given that on September 2, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service denied the above request because the research, as proposed in the application, does not further a *bona fide* scientific purpose; will likely result in substantial disruption of normal behavior and feeding activities; and, is not consistent with the purposes and policies of the Marine Mammal Protection Act.

Documentation on this application and NMFS decision are available for review, by appointment, in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: September 2, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–21929 Filed 9–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 2 to permit No. 588.

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No 588 (P13S), issued to Mystic Marinelife Aquarium, 55 Coogan Boulevard, Mystic, Connecticut 06355 on May 11, 1987 (52 FR 19374), as modified on November 9, 1990 (55 FR 48153), is further modified as follows:

Section B.6, first sentence is changed to read:

"6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1993."

This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: September 2, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–21930 Filed 9–10–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the procurement list a self-adjusting arming adapter to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 13, 1992.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverely Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 5, 1992, the Committee for Purchase From the Blind and Other Severely Handicapped published a notice (57 FR 24026) of the proposed addition of this adapter to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small of entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no know regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C.46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List: Arming Adapter, Self-Adjusting, 1325–01–159–8083.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverely L. Milkman,

Executive Director.

[FR Doc. 92–21979 Filed 9–10–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 13, 1992.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and service to the Procurement List:

Commodity

Can, water, plastic, 7240–00–089–3827.

Nonprofit Agency: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi.

Service

Janitorial/Custodial, Agricultural Research Service, Southern Plains Range Research Station, 2000 18th Street, Woodward, Oklahoma.

Nonprofit Agency: Oklahoma's Action Rehabilitation Centers, Inc., Woodward, Oklahoma.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–21980 Filed 9–10–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Forms 250, 250C, and 250–1; OMB Control Number 0704–0248.

Type of Request: Expedited Submission-Approval Date Requested: October 31, 1992.

Average Burden Hours/Minutes per Response: 8 minutes.

Responses per Respondent: 1.

Number of Respondents: 7,800,000.

Annual Responses: 7,800,000.

Annual Burden Hours: 988,000.

Needs and Uses: This information collection requirement concerns information related to material inspection, acceptance, and contractor invoicing matters.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: September 4, 1992.

L.M. Bynum,

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

BILLING CODE 3810-01-M

MATERIAL INSPECTION AND RECEIVING REPORT

Form Approved
OMB No. 0704-0248

Public reporting burden for this collection of information is estimated to average 30 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 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 Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.

1. PROC. INSTRUMENT IDEN. (CONTRACT)	(ORDER) NO.	6. INVOICE NO. / DATE	7. PAGE	OF	8. ACCEPTANCE POINT

2. SHIPMENT NO.	3. DATE SHIPPED	4. B/L TCN	5. DISCOUNT TERMS

9. PRIME CONTRACTOR CODE		10. ADMINISTERED BY CODE	
11. SHIPPED FROM (If other than 9) CODE	FOB:	12. PAYMENT WILL BE MADE BY CODE	
13. SHIPPED TO CODE		14. MARKED FOR CODE	

15. ITEM NO.	16. STOCK/PART NO. DESCRIPTION (Indicate number of shipping containers - type of container - container number.)	17. QUANTITY SHIP / REC'D *	18. UNIT	19. UNIT PRICE	20. AMOUNT

21. CONTRACT QUALITY ASSURANCE		22. RECEIVER'S USE
A. ORIGIN ☐ CQA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.	B. DESTINATION ☐ CQA ☐ ACCEPTANCE of listed items has been made by me or under my supervision and they conform to contract, except as noted herein or on supporting documents.	Quantities shown in column 17 were received in apparent good condition except as noted.
DATE / SIGNATURE OF AUTH GOVT REP	DATE / SIGNATURE OF AUTH GOVT REP	DATE RECEIVED / SIGNATURE OF AUTH GOVT REP
TYPED NAME AND OFFICE	TYPED NAME AND TITLE	TYPED NAME AND OFFICE

** If quantity received by the Government is the same as quantity shipped, indicate by (✓) mark, if different, enter actual quantity received below quantity shipped and encircle.*

23. CONTRACTOR USE ONLY

DD Form 250, 920902 Draft

Previous edition may be used.

MATERIAL INSPECTION AND RECEIVING REPORT - *CONTINUATION SHEET*

PAGE	OF	*Form Approved OMB No. 0704-0248*

Public reporting burden for this collection of information is estimated to average 35 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 of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.

SHIPMENT NO.	DATE SHIPPED	PROC INSTRUMENT IDEN. (CONTRACT)	(ORDER) NO.	INVOICE NO.

ITEM NO.	STOCK/PART NO. DESCRIPTION *(Indicate number of shipping containers - type of container - container number.)*	QUANTITY SHIP / REC'D	UNIT	UNIT PRICE	AMOUNT

DD Form 250C, 920902 Draft *Previous edition may be used.* 144/004

TANKER/BARGE MATERIAL INSPECTION AND RECEIVING REPORT

Form Approved
OMB No. 0704-0248

Public reporting burden for this collection of information is estimated to average 35 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 of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0248), Washington, DC 20503.

1. TANKER/BARGE ☐ LOADING REPORT ☐ DISCHARGE REPORT	2. INSPECTION OFFICE	3. REPORT NUMBER
4. AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (Loading)	5. DEPARTMENT	6. PRIME CONTRACT OR P.O. NUMBER
7. NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading)		8. STORAGE CONTRACT
9. TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS (Loading)		10. ORDER NUMBER ON SUPPLIER
11. SHIPPED TO (Receiving Activity, City, State and/or Local Address)		12. B/L NUMBER
		13. REQN. OR REQUEST NO. / 14. CARGO NUMBER
15. VESSEL	16. DRAFT ARRIVAL FORE / AFT	17. DRAFT SAILING FORE / AFT
18. PREVIOUS TWO CARGOES FIRST / LAST	19. PRIOR INSPECTION	
20. CONDITION OF SHORE PIPELINE	21. APPROPRIATION (Loading)	22. CONTRACT ITEM NO.
23. PRODUCT	24. SPECIFICATIONS	

25. STATEMENT OF QUANTITY	LOADED	DISCHARGED	LOSS/GAIN	PER CENT
BARRELS (42 Gals) (Net)				
GALLONS (Net)				
TONS (Long)				

26. STATEMENT OF QUALITY

TESTS	SPECIFICATION LIMITS	TEST RESULTS

27. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD DISCHARGE		
VESSEL ARRIVED IN ROADS		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD DISCHARGE		
CARGO HOSES CONNECTED		
COMMENCED LOADING DISCHARGE		
STOPPED LOADING DISCHARGING		
RESUMED LOADING DISCHARGING		
FINISHED LOADING DISCHARGING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (Actual/Estimated)		

28. REMARKS (Note in detail cause of delays such as repairs, breakdown, slow operation, stoppages, etc.)

29. COMPANY OR RECEIVING TERMINAL

(Signature)

30. I CERTIFY THAT THE CARGO WAS INSPECTED, ACCEPTED AND LOADED/DISCHARGED AS INDICATED HEREON.

(Date) (Signature of Authorized Government Representative)

31. I HEREBY CERTIFY THAT THIS TIME STATEMENT IS CORRECT.

(Master or Agent)

DD Form 250-1, 920902 Draft — Previous edition may be used. — 346/004

[FR Doc. 92-21970 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-01-C

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 28–29 September 1992.

Time: 0800–1700 Hours.

Place: Ames Research Facility Sunnyvale, CA. Palo Alto Research Facility, Palo Alto Hoover Institute, Palo Alto, CA

Agenda: The Army science Board Ad hoc subgroup on "Evaluating and Selecting Proposals" will meet with representatives of government agencies and private industry to review concerns about unsolicited proposals. It is likely that the participants will present case studies and examples with classified and proprietary information. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–22065 Filed 9–10–92; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Command; Rules and Accessorial Services Governing the Movement of Department of Defense Petroleum Products by Pipeline Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notification of procedural changes in DOD freight rate acquisition programs.

SUMMARY: On January 17, 1990, the Military Traffic Management Command published in the **Federal Register** (55 FR 1605) a notice of intent to modify the procedures used to acquire rates and charges from the commercial pipeline industry for the movement of its refined petroleum products by pipeline. These modifications to the procedures have been accomplished and can be found in the rules publication, MTMC Pipeline Rules Publication No. 6. Copies may be obtained by writing to HQ, Military Traffic Management Command, Attn: MTIN–NG, room 629, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, telephone (703) 756–1585.

FOR FURTHER INFORMATION CONTACT: Mr. Blaise J. Guzzardo or Ms. Eunice Anderson, HQ, Military Traffic Management Command, MTIN–NG, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, telephone (703) 756–1585.

SUPPLEMENTARY INFORMATION: The transportation regulatory reform legislation enacted over the past several years has brought an influx of new carriers doing business with DOD resulting in a corresponding proliferation of rate publications, and a great diversity in the manner in which carriers' rates, rules, and services are expressed within those publications. As a result, the standardization and automation of carriers' rates and charges are essential to the formulation of a successful and manageable rate comparison program. Automation is feasible, of course, only if these rates and charges are expressed in a uniform manner compatible with electronic data processing.

MTMC Pipeline Rules Publication No. 6 (MPRP No. 6) contains both rules and accessorial service requirements to govern the rates and services of pipeline carriers doing business with DOD. The publication has application to both interstate and intrastate commerce from, to, or between points in the continental United States (CONUS), and from, to, or between Alaska and/or Canada that are specified in carriers individual tenders filed with HQ, MTMC. The purpose in developing this publication is to define and clearly express the transportation needs of DOD for the movement of petroleum products requiring pipeline service and to provide the standardization necessary for achieving a fully automated system for routing and auditing DOD traffic.

This publication is designed to be used with DOD Standard Tender of Freight Services, MT Form 364–R. Pipeline tenders will be effective December 14, 1992 and must be submitted on MT Form 364–R. Tenders of carriers subject to MPRP No. 6 may not refer to any other publication for application of rates and charges therein.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–21948 Filed 9–10–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intention To Prepare an Environmental Impact Statement for MCAS Tustin Relocation to Twentynine Palms and Camp Pendleton, CA

Pursuant to section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and the provisions of section 2905(c) of Public Law 101–510; 104 stat. 1808, 1813–1815; 10 U.S.C. section 2687 note, the U.S. Navy and Marine Corps announce their intent to prepare an Environmental Impact Statement (EIS) to describe and evaluate the environmental effects of a relocation of functions from Marine Corps Air Station (MCAS) Tustin, California, to both Marine Corps Air Ground Combat Center (MCAGCC) Twentynine Palms, California, and Marine Corps Air Station/Marine Corps Base (MCAS/MCB) Camp Pendleton, California. MCAS Tustin is scheduled for closure by July 10, 1997, in compliance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510). To support the congressionally-mandated closure of MCAS Tustin and the associated relocation of functions, a new MCAS would be required at MCAGCC Twentynine Palms, and additional facilities would be required at MCAS/MCB Camp Pendleton.

The EIS will assess the relevant environmental issues pertaining to all government plans and actions associated with the construction and operation of new facilities at both MCAGCC Twentynine Palms and MCAS/MCB Camp Pendleton. The EIS will provide an equal treatment evaluation of environmental effects of the project at each of at least three alternative sites at both MCAGCC Twentynine Palms and MCAS/MCB Camp Pendleton; all addressed sites will be evaluated to determine environmentally-preferred locations for project components. Major environmental issues to be addressed include geology and soils, air quality, hydrology and water quality, public health and safety, biological resources, land use, military operations, cultural resources, socioeconomics, community services, transportation and circulation, aesthetics, utilities, noise, and hazardous materials and wastes. The EIS will also identify mitigation measures to lessen or avoid adverse effects. The analysis will be performed in accordance with NEPA and other applicable statutes and regulations and

will address direct and indirect, short-term and long-term, and cumulative impacts associated with the realignments.

The U.S. Navy and Marine Corps will initiate a scoping process for the purpose of identifying the significant issues relating to this action. Public scoping meetings are scheduled to occur at Twentynine Palms, California and at Oceanside, California, between September 13 and October 12, 1992. The specific date, time, and location of these meetings will be announced in local newspapers.

A short formal presentation will precede requests for public comment. U.S. Navy and Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written comments will be considered equally with those provided at the public scoping meetings. Issues and concerns raised during the scoping process will be addressed in the Draft EIS, scheduled for release to the public by mid-1993. Written statements and or questions regarding the scoping process should be mailed no later than 30 days from the date of this notice to the Officer-in-Charge of Construction, Twentynine Palms, 1420 Kettner Blvd., suite 507, San Diego, CA 92101-2404 (Attn: Mr. Michael Barbusca, Code T09P).

Dated: September 2, 1992.

Geoffrey P. Lyon

LtCol, United States Marine Corps, Federal Register Liaison Officer

[FR Doc. 92-21937 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet October 27-28, 1992, from 9 am to 5 pm, in Alexandria, Virginia.

The purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to environmental implications for the Navy of ordnance manufacture and disposal.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

September 3, 1992.

Geoffrey P. Lyon

LtCol, United States Marine Corps, Federal Register Liaison Officer.

[FR Doc. 92-21936 Filed 9-10-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA No. 84.116A&B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

PURPOSE OF PROGRAM: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

The Comprehensive Program supports AMERICA 2000, the President's strategy for moving the Nation toward achieving the National Education Goals. National Education Goal 5 calls for all Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

ELIGIBLE APPLICANTS: Institutions of higher education or combinations of such institutions and other public and private nonprofit institutions and agencies.

DEADLINE FOR TRANSMITTAL OF PREAPPLICATIONS: October 27, 1992.

DEADLINE FOR TRANSMITTAL OF FINAL APPLICATIONS: March 5, 1993.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: May 4, 1993.

APPLICATIONS AVAILABLE: September 11, 1992.

AVAILABLE FUNDS: The Administration has requested a total of $16,000,000 for the Fund for the Improvement of Postsecondary Education (FIPSE) for FY 1993. Of this amount, it is anticipated that approximately $4,000,000 will be available for an estimated 60 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1993 appropriation. The estimates in this notice assume passage of the Administration's Budget.

ESTIMATED RANGE OF AWARDS: $15,000 to $150,000 per year.

ESTIMATED AVERAGE SIZE OF AWARDS: $70,000.

ESTIMATED NUMBER OF AWARDS: 60.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 630.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 630.11 the Secretary gives an absolute preference to applications that meet the following priority:

Projects to improve postsecondary education opportunities.

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.12, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications to ensure that the undergraduate curricula provide the knowledge and skills needed by educated citizens.

Invitational Priority 2—Applications to ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards.

Invitational Priority 3—Applications to make campus culture more conducive to academic commitment by all postsecondary students by developing a learning friendly campus ethos.

Invitational Priority 4—Applications to improve the scope and quality of international education.

Invitational Priority 5—Applications to improve the quality of undergraduate education and graduate education by

raising academic standards, strengthening the liberal arts component of undergraduate professional programs, developing means of assessing programs and institutions, and recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies.

Invitational Priority 6—Applications to reform the education of school teachers by increasing current and prospective teachers' mastery of the subjects they teach, ensuring that prospective teachers have a solid grounding in the liberal arts, and attracting more people of commitment and high intellectual ability to the teaching profession.

Invitational Priority 7—Applications to reform graduate education by fostering the teaching skills of Ph.D. candidates bound for careers in teaching, and broadening the social and ethical perspectives of students in professional graduate programs generally.

Invitational Priority 8—Applications to improve financing and educational reform.

Invitational Priority 9—Applications to strengthen postsecondary educational institutions and organizations through faculty development, and by recognizing and rewarding good teaching.

Invitational Priority 10—Applications to make postsecondary education responsive to changes in the nation's economy.

Invitational Priority 11—Applications to develop educational uses of technology, including computers, television, and other electronic media.

Selection Criteria

In evaluating preapplications or applications for grants under this Comprehensive Program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) Significance for Postsecondary Education

Each proposed project will be reviewed for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) Feasibility

Each proposed project will be reviewed for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) The contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) Appropriateness of Funding Projects

The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

For preapplications (preliminary applications), the Secretary will give greater weight to the selection criteria under *Significance for Postsecondary Education.* The Secretary will give equal weight to *Feasibility* and *Appropriateness of funding projects.* For applications (final applications), all criteria are equally important. Within each of these criteria equal weight will be given to each of the subcriteria. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion. The Secretary then bases final judgment on an overall assessment of the degree to which the applicant addresses all selection criteria.

FOR APPLICATIONS OR INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 205–0082 to order applications; or (202) 708–5750 for information. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 1135.

Dated: September 4, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–21901 Filed 9–10–92; 8:45 am]

BILLING CODE 4000–10–M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the Achievement Levels Committee of the National Assessment Governing Board scheduled for September 9, 1992, at 800 North Capitol Street, NW., suite 825, Washington, DC, as published in the **Federal Register** on Monday, August 24, 1992, Vol. 57, page 38301. The teleconference meeting has been rescheduled for September 18, 1992 at 11 a.m.

Dated: September 8, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–21914 Filed 9–10–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Restoration and Waste Management Advisory Committee (EMAC); Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Restoration and Waste Management Advisory Committee (EMAC).

Date/Times: September 29, 1992: 1:30 p.m.–5:30 p.m.; 7 p.m.–10:30 p.m. September 30, 1992: 8 a.m.–5 p.m.

Place: Sheraton Springdale Hotel, 11911 Sheraton Lane (near intersection of I–275 and Ohio Rt. 4), Springdale, Ohio 45246.

Contact: James T. Melillo, U.S. Department of Energy, Executive Secretary, EMAC, AC–21, room 7A031, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586–0396.

Purpose of the Committee: The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program by assisting in the process of securing consensus recommendations, and providing the department's numerous publics with opportunities to make their views known on the Environmental Restoration & Waste Management Program.

Tentative Agenda

Tuesday, September 29, 1992

1:30 p.m.
Chairman Paulson Opens Meeting
Fernald Site Overview
National Environmental Policy Act (NEPA) Overview
5:30 p.m.
Meeting Adjourns
7 p.m.
Public Comment Session
—Committee Overview of Site Tour for Public
—Public Comments
10:30 p.m. Meeting Adjourns

Wednesday, September 30, 1992

8 a.m.
Committee Business
—Comments on Implementation Plan for the Programmatic Environmental Impact Statement (PEIS)
—Committee Operations
—Future Meetings
12Noon Lunch
12 Noon Lunch
1:30 p.m.
Committee Business Continued
—Selected Technical Issues
5 p.m. Meeting Ends

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ken Morgan, Director of Public Information, Fernald Environmental Management Project, P.O. Box 398705, Cincinnati, OH 45239–8705 (513) 738–9245. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Questions relating to Committee operations should be directed to James T. Melillo, Executive Secretary for the Committee, at the address or telephone number listed above. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 8, 1992.

J. Robert Frank,

Acting Advisory Committee Management Officer.

[FR Doc. 92–21986 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Energy Research Priorities.

Date and Time: Thursday, September 24, 1992, 8:30 a.m.–5 p.m.

Place: The Hyatts Fair Lakes, 12777 Fair Lakes Circle, Fairfax, Virginia 22033, 703–818–1234.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–7092.

Purpose: The Task Force was established to advise Secretary of Energy on priorities and program balance for the research and development responsibilities, activities, and operations of the Office of Energy Research of the Department of Energy.

Tentative Agenda

Thursday, September 24, 1992, 8:30 a.m.–5 p.m.

8:30 a.m.–8:40 a.m.–Opening Remarks
8:40 a.m.–12 p.m.–The Future Role of the Office of Energy Research in the Support of Science and Technology
12:00 p.m.–12:45 p.m.–Lunch
12:45 p.m.–1:30 p.m.–Review of Response of Fusion Energy Advisory Committee to Previous Task Force Recommendations
1:30 p.m.–2:20 p.m.–Task Force Discussion
2:20 p.m.–2:45 p.m.–Break
2:45 p.m.–3:15 p.m.–Progress Report from BESAC Panel on Neutron Research and Sources
3:15 p.m.–4 p.m.–Task Force Discussion
4 p.m.–4:30 p.m.–Future Agenda for Task Force in Evaluating Energy Research Plans for Science and Technology Programs
4:30 p.m.–5 p.m.–Public Comment and Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Monday, September 21, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 20 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.D.T.) Monday, September 21, 1992, to assure that it is considered by Board members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m.–4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: September 8, 1992.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 92–21987 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Proposed Tenaska Washington II Generation, Competitive Acquisition Project; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meeting

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare an Environment Impact Statement (EIS) and conduct a scoping meeting.

SUMMARY: BPA plans to prepare and consider an EIS on its proposal to purchase firm power produced by the proposed Tenaska Washington II Generation Project. This project was proposed by Tenaska Power Partners in response to a competitive bidding by BPA. BPA will evaluate the environmental effects associated with the proposed project to aid in its decision whether or not to purchase the power output from the plant.

The proposed project would be located within the Frederickson Industrial Park near Tacoma in Pierce County, Washington. The facility would consist of one General Electric Frame 7FA combustion turbine-generator, one heat recovery steam generator with supplemental firing capability, and one steam turbine-generator, all together

having a nominal output of 240 average megawatts (aMW).

The primary fuel would be natural gas and the back-up fuel would be oil. The natural gas would be delivered by an existing pipeline adjacent to the project site and connected to the facility by a short feeder pipe or stub. The back-up fuel would be delivered to the site by truck and stored on site. A cooling tower would be built on the site to cool the water before it is discharged into the Pierce County Sanitary Sewer System. Water for steam supply and cooling would be purchased from the City of Tacoma.

The electrical power generated at the plant would be sold to BPA for marketing through the regional power grid. In order to connect the proposed generation project to the Bonneville Power transmission system, a new 230-kV line with overhead ground wire, approximately one mile long, would be required. This line would connect the new generation plant to BPA's South Tacoma 230-kV Switching Station. At the South Tacoma Station, BPA would expand and modify existing facilities to include 230-kV power circuit breakers, disconnect switches, control and protective relaying, communications, and a control house. The South Tacoma Station would be tied into the exiting White River-Cowlitz Tap-Olympia 230-kV transmission line. Further details of the South Tacoma expansion would be determined during the preliminary and final design stages.

DATES: A public meeting will be held on September 29, at Bethel High School, 22215 38th Avenue East, Spanaway, Washington, to discuss the scope of the EIS for Tenaska Washington II Generation Project. During the scoping period, BPA is asking the public to identify significant issues that should be considered in the EIS. Comments on the scope of the EIS should be submitted to the address below by October 30, 1992.

After the scoping period, an Implementation Plan for the EIS will be prepared and made available to the public for information. The Draft EIS is scheduled to be circulated for public review and comment in the summer of 1993, and notice as to how copies may be obtained will be published at that time. A public hearing will be held during the 45-day comment period. Copies of the Draft EIS will be available from BPA's Area Offices and from BPA's Public Information Center. The Final EIS should be available in the winter of 1993. A Record of Decision is expected to be issued in the spring of 1994.

ADDRESSES: Written comments on the scope of the EIS should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Nandranie Tuck, EIS Manager at 503-230-4389 or Mr. Charles Alton, Environmental Coordinator at 503-230-5878, or you may call the Public Involvement Office at 503-230-3478 in Portland; the toll free number is 800-622-4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97410, 503-465-6592.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2515.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109-1030, 206-553-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6226.

Ms. Ruth Bennett, Idaho Falls District Manager (Acting), 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-0276.

Mr. Jim Normandeau, Boise District Manager, room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

For general information on DOE's NEPA review procedures or status of a NEPA review, contact Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; phone (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION:

Background

BPA is a Federal power marketing agency with statutory responsibilities to supply electrical power to its utility, industrial, and other customers in the Pacific Northwest. According to BPA's current load/resource balance study, the demand for energy now exceeds supply by about 500 aMW. The load/resource balance forecast projects a deficit of 1,500 to 2,600 aMW of energy by the year 2000. The underlying need for action is to satisfy BPA's customers' demand for electrical energy.

Guided by the recommendations in BPA's 1990 Resource Program, BPA has commenced a dynamic and multifaceted pilot resource acquisition effort to test various approaches for acquiring a diverse portfolio of cost-effective, reliable, and environmentally sound resources. One acquisition approach being tested is an all-source competitive bidding process to acquire about 300 aMW of energy.

In response to BPA's request for proposals under the competitive bidding process, over 100 proposals totalling 5,300 aMW of generation and 116 aMW of conservation energy were submitted.

Through an analysis of system cost, project viability, preliminary environmental evaluation and discussion with the developers BPA has proposed 17 conservation and 3 generation projects for further consideration and review toward satisfaction of the 300 aMW target. Tenaska and each of the remaining 19 proposals will be evaluated independently as they are neither connected to nor dependent upon each other for their justification. This EIS will include at a minimum the no action alternative.

Since the proposed Tenaska project would satisfy only a small portion of BPA's overall energy needs for this decade, whether or not BPA acquires the Tenaska energy output would not foreclose future considerations of other potential energy resources available to BPA through its various acquisition approaches.

Environmental Analysis

The Tenaska Washington II Generation Project would be used as "hydrofirming power" to guarantee the availability of energy from the hydropower system, which is subject to fluctuations due to weather variations.

The proposed combustion turbine would be operating as a combined cycle system. This turbine configuration is highly efficient because the waste heat from the turbine exhaust is captured to create steam for the steam turbine generator which also produces electricity.

The use of "cleaner burning" natural gas in combination with steam injection into the turbine and Selective Catalytic Reduction (SCR) would significantly reduce air emissions of this combustion turbine. The additional SCR and steam injection would reduce nitrous oxide

emissions to less than four parts per million (ppm). This is significantly below the current state threshold of 7–9 ppm. Additionally, the developer would fund cost-effective proposals for offsetting carbon dioxide emissions.

The site is designated as "M2" Heavy Industrial. There is property zoned Suburban-Agricultural (SA–12) within a quarter of a mile from the site. Residential zoned property is one-half mile from the site and is separated from the proposed plant property boundary by an existing railroad line, an oil products pipeline right of way, vacant M2 Heavy Industrial zoned property, and a 230–kV transmission line corridor. Further from the site are farmers and ranchers. Visual, auditory and air quality impacts upon area residents, tree farmers and ranchers will be carefully considered in the environmental analysis.

Steven Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92–21989 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Extension of Comment Period for Review of and Amendment to Section 6(c) Policy of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Extend public comment period.

SUMMARY: On August 20, BPA published a notice dated August 6, 1992, in the **Federal Register**, 57 FR 37,792 (1992), for review of and amendment to its Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (ACT), 16 U.S.C. 839 d(c). BPA proposes to extend the period for receipt of comment on the proposed amendments through 5 p.m. on October 16, 1992.

SUPPLEMENTARY INFORMATION: BPA and the Northwest Power Planning Council (Council) are in the process of conducting a 5-year review of their respective Policies for section 6(c) of the Act. BPA is reviewing its Policy, in accordance with section B.1.c. of that Policy, and proposes to amend it to incorporate a provision relating to proposals to grant billing credits. BPA also proposes to incorporate provision for payment of investigation or preconstruction costs of a sponsor of a major resource. Finally, BPA proposes to incorporate a provision for expedited hearings procedures for section 6(c) review. BPA is seeking public comment on the proposed amendments. BPA is extending the deadline for receipt of comment through 5 p.m. on October 16, 1992, to coordinate with the Council's public process.

Responsible Official: Charles E. Meyer, Director, Division of Resource Planning, Office of Energy Resources, is the official responsible for this Policy.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212 by 5 p.m. on October 16, 1992. For questions or to submit oral comments, call 503–230–3478 in Portland; or toll-free 800–622–4519. To request documents, call 800–622–4520.

FOR FURTHER INFORMATION CONTACT: Julie Pipher, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478.

Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130.

Mr. George Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 243, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, room 112, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98801, 509–662–4379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. Ruth Bennett, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Jim Normandeau, Boise District Manager, 304 North 8th Street Room 450, Boise, Idaho 83702, 208–334–9137.

Issued in Portland, Oregon, August 31, 1992.

Steven G. Hickok,

Acting Administrator.

[FR Doc. 92–21990 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD92–08950T, Oklahoma–26]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 4, 1992.

Take notice that on August 31, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Atoka Formation underlying a portion of Custer and Washita Counties, Oklahoma qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, which includes both state and restricted Tribal or alloted Indian lands, is described as follows:

Township 12 North, Range 19 West
Section 31
Township 12 North, Range 20 West
Sections 35–36
Township 11 North, Range 19 West
Sections 6–7
Township 11 North, Range 20 West
Sections 1–2 and 11–12

The notice of determination also contains Oklahoma's findings that the referenced portion of the Upper Atoka Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21886 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–08948T Texas–69]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designation Tight Formation

September 4, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg Second Massive Sand Formation underlying a

portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area covers approximately 815 acres in the following surveys:

Juan Vega, A–280
Section 38
Antonio Villareal, A–279
Section 39

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg Second Massive Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21887 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–08949T Texas–70]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 4, 1992.

Take notice that on August 31, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg K–3 Sand Formation underlying a portion of Starr County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area covers approximately 278 acres in the following surveys:

Juan Vega, A–280
Section 38
Ygnacio Trevino, A–269
Section 100

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg K–3 Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21888 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–67–000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that on September 1, 1992, Canyon Creek Compression Company (Canyon) tendered for filing Third Revised Sheet No. 7 (First Revised Volume No. 1) and Third Revised Sheet No. 5 (First Revised Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1992.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21889 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–84–000]

Caprock Pipeline Co.; Proposed Changes of FERC Gas Tariff

September 4, 1992.

Take notice that on September 1, 1992, Caprock Pipeline Company, (Caprock Pipeline) tendered for filing the following tariff sheets to its FERC Gas Tariff, Revised Original Volume No. 3, to become effective October 1, 1992:

Sixth Revised Sheet No. 4, Superseding Fifth Revised Sheet No. 4
Sixth Revised Sheet No. 5, Superseding Fifth Revised Sheet No. 5

Caprock Pipeline states that on July 27, 1992, the Commission notified Caprock Pipeline that the fiscal year 1992 Annual Charge Adjustment (ACA) surcharge would be $.0023 per Mcf. Caprock Pipeline requests that the Commission permit the tariff sheets filed herein to adjust the ACA surcharge rates to become effective October 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21882 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–7–21–000 TM93–1–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 1, 1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

September 2, 1992

Twenty-Third Revised Sheet No. 26
1 Rev Fourteenth Revised Sheet No. 26.1
1 Rev Twenty-Second Revised Sheet No. 26.A

1 Rev Fourteenth Revised Sheet No. 26A.1
Sub Twelfth Revised Sheet No. 26B.1
Seventh Revised Sheet No. 26C.1
1 Rev Eleventh Revised Sheet No. 26D
Twenty-Second Revised Sheet No. 163

October 1, 1992

Sub Fifteenth Revised Sheet No. 26.1
Sub Fifteenth Revised Sheet no. 26A.1
Sub Twenty-First Revised Sheet No. 26.C
Sub Twelfth Revised Sheet No. 26D

Columbia states the sales rates set forth on First Revised Fourteenth Revised Sheet No. 26.1 reflect an increase of 7.65¢ per Dth in the commodity rate when compared with the total CDS rates reflected in its last PGA filing which was accepted by letter Order dated August 27, 1992, with an effective date of August 1, 1992. In addition, the transportation rates set forth on Seventh Revised Sheet No. 26C.1 and First Revised Eleventh Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.18¢ per Dth.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21862 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-429-001]

Crockett Cogeneration, A California Limited Partnership; Amendment to Filing

September 4, 1992.

On August 31, 1992, Crockett Cogeneration, a California Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to upstream ownership structure of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by September 21, 1992, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21867 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2745-000]

George W. Edwards, Jr.; Filing

September 4, 1992.

Take notice that on August 21, 1992, George W. Edwards, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, El Paso Electric Company
Director, Hubbell Incorporated

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 18, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21890 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-187-000, CP9 -2448-000 (consolidated) and FA91-23-001 (not consolidated)]

Florida Gas Transmission Co.; Informal Settlement Conference

September 4, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on September 14, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in Docket Nos. RP91-187-000 and CP91-2448-000, which relate to cost of service, incentive rates, throughput and bidding procedures for interruptible capacity as well as the issues related to accounting for line pack gas in Docket No. FA91-23-001.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21866 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-51-000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on August 28, 1992, tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff:

First Revised Volume No. 1

Ninth Revised Sheet No. 57(iv)

Original Volume No. 3

Sixth Revised Sheet No. 2
Seventh Revised Sheet No. 3

Great Lakes states that the above tariff sheets reflect the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes, was established by FERC notice given on July 27, 1992 and is to be effective October 1, 1992.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 14, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21885 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–65–000]

Jupiter Energy Corp., Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on August 31, 1992 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

Sixth Revised Sheet No. 4A
Sixth Revised Sheet No. 5A
Sixth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff are tendered to change the Annual Charge Adjustment ("ACA") rate to 0¢ per Mcf to reflect that the Commission sent a July 7, 1992 bill to Jupiter that imposes no annual billing charges for the 1992 Fiscal Year. Jupiter states that it is presently in discussions with the Commission Staff to determine whether the July 7 bill is accurate. Jupiter reserves the right to revise its ACA charge from the 0¢ surcharge proposed herein should the Commission assess an annual charge billing on Jupiter for the 1992 Fiscal Year.

Jupiter Energy proposes an effective date of October 1, 1992.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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 Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21883 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–53–000]

K N Energy, Inc.; Tariff Filing

September 4, 1992.

On September 1, 1992, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Fourth Revised Volume No. 1

Twelfth Revised Sheet No. 4
Twelfth Revised Sheet No. 4B

First Revised Volume No. 1–A

Fifth Revised Sheet No. 4

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 14, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21865 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–42–000]

MIGC, Inc.; Prefiling Conference

September 4, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Thursday, October 1, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The purpose of the conference is to address MIGC, Inc.'s summary of its proposal to comply with Order Nos. 636 and 636–A.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact David Cain at (202) 208–0909.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21891 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–103–000]

Moraine Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1992.

Take notice that on September 1, 1992, Moraine Pipeline Company (Moraine) tendered for filing Fourth Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1992.

Moraine states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Moraine to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf. Under Moraine's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .23¢ per Mcf.

Moraine requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1992.

Moraine states that a copy of the filing is being mailed to Moraine's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21892 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–26–000]

Natural Gas Pipeline Co. of America; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that on September 1, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, revised tariff sheets to be effective October 1, 1992.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1992 is .23¢ per Mcf. Under Natural's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .22¢ per Mcf.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1992.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21893 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–1–59–000 and TM93–1–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 4, 1992.

Take notice that Northern Natural Gas Company, (Northern), on August 31, 1992, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483–A. The instant filing reflects a Base Average Gas Purchase Cost of $2.6560 per MMBtu to be effective October 1, 1992, through October 31, 1992.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. The PGA rulemaking required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Demand rate component of $7.942 per MMBtu. This rate will be effective October 1, 1992 through October 31, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21894 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–28–000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

September 4, 1992.

Take notice that on August 31, 1992, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in Appendix A attached to the filing, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in Appendix B attached to the filing. Panhandle requests an effective date of October 1, 1992 for the tariff sheets.

Panhandle states that the revised tariff sheets are being submitted in accordance with section 20 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1. The Commission has changed the unit rate of the Annual Charge Adjustment Clause (ACA) to be applied to rates for recovery of 1992 Annual Charges pursuant to Order No. 472 in Docket No. RM87–3–000.

Panhandle states that copies of the filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–21895 Filed 9–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–1–1–30–000]

Trunkline Gas Co.; Change in Tariff

September 4, 1992.

Take notice that on August 31, 1992, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as reflected in appendix No. 1, and to its FERC Gas Tariff,

Original Volume No. 2, as reflected in appendix No. 2 attached to the filing.

The proposed effective date of these revised tariff sheets is October 1, 1992.

Trunkline states that the above-referenced tariff sheets are being filed in accordance with Commission Order No. 472 and pursuant to section 20 (Annual Charge Adjustment (ACA) Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Trunkline's current ACA Unit Surcharge of $0.0023 per Dt effective October 1, 1991 as approved by the Commission's Order dated September 30, 1991 in Docket No. TM92-1-30-000 does not change with the tracking of the ACA Unit Surcharge authorized for the fiscal year 1992 and the additional increment for the fiscal year 1991 adjustment.

Several of Trunkline's rate schedules involve utilization of Trunkline's capacity in third party pipelines. This filing incorporates ACA revisions filed by these third party pipelines into Trunkline's FERC Gas Tariff, Original Volume No. 2.

Trunkline states that copies of the filing are being served on all customers subject to the tariff sheets and the applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21864 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-111-000]

Steuben Gas Storage Co.; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

September 4, 1992.

Take Notice that Steuben Gas Storage Company ("Steuben") on August 28, 1992, tendered for filing the following tariff Sheets:

Original Volume No. 2

Original Sheet No. 1(A)
First Revised Sheet No. 11
Original Sheet No. 11(A)
First Revised Sheet No. 34
Original Sheet No. 34(A)
First Revised Sheet No. 57
Original Sheet No. 57(A)
First Revised Sheet No. 80
Original Sheet No. 80(A)

These sheets reflect Steuben's initial filing to recover the Annual Charge Adjustment ("ACA") as provided by the provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben is per FERC notice given on July 27, 1992 and is to be effective October 1, 1992.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 14, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21896 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-82-000]

Viking Gas Transmission Co.; Annual Purchased Gas Adjustment Filing

September 4, 1992.

Take notice that on September 1, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheet to be effective November 1, 1992:

Original Volume No. 1

Twenty First Revised Sheet No. 6

Viking states the purpose of this filing is to institute the annual purchased gas adjustment pursuant to Article XVII of its tariff. The Current Purchased Gas Cost Rate Adjustments reflected on Twenty First Revised Sheet No. 6 consist of a $.2841 per dekatherm adjustment to the gas rates, a $(.0871) per dekatherm adjustment to the Rate Schedule SR-2 commodity rate, and a $(1.06) per dekatherm adjustment to the demand rates. The revisions also reflect a $1.0477 per dekatherm surcharge adjustment to the gas rates and a $2.36 per dekatherm adjustment to the demand rates for amortizing the Unrecovered Gas Cost Account.

Viking further states that it has mailed copies of this filing to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 21, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21855 Filed 9-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-88-NG]

Nicholson & Associates, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Nicholson & Associates, Inc. blanket authorization to import up to 146 Bcf of natural gas from Canada over a two-year term, beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. 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, D.C., September 4, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-21988 Filed 9-10-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of July 13 through July 17, 1992

During the week of July 13 through July 17, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Linda Farnkoff, 7/13/92, LFA–0211

Linda Farnkoff filed an Appeal from determinations issued by the Director, Office of Communications, Department of Energy Field Office, Richland (DOE/RL), in response to a request for information submitted under the Privacy Act of 1974. In considering the Appeal, the DOE found that DOE/RL had searched all the systems of records under its control that might contain the material sought by Farnkoff and that the documents located in that search had been provided to her. Accordingly, Farnkoff's Appeal was denied.

Request for Exception

Ernest E. Latsha, Inc., 7/13/92, LEE–0035

Ernest E. Latsha, Inc. (Latsha), filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–863, entitled "Petroleum Product Sales Identification Survey." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms, and therefore determined that it would not be granted relief from filing. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Oasis Petroleum Corporation, 7/16/92, LEF–0007

The DOE issued a Decision and Order implementing special refund procedures to distribute $1,064,798, plus accrued interest, remitted to the DOE by Oasis Petroleum Corporation (Oasis) pursuant to a settlement agreement between the DOE and Oasis. The DOE determined that it would direct 16 percent of the Oasis settlement agreement fund, plus accrued interest, into a crude oil refund pool, and that the remaining 84 percent of the fund, plus accrued interest, would be directed into a refined product refund pool. The crude oil pool will be disbursed to the federal government, the states, and eligible applicants in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. The refined product portion of the Oasis settlement fund will be distributed in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of Oasis's alleged violation of petroleum allocation regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Apex Oil Co. Clark Oil and Refining Corp./Jerry's Clark, 7/13/92, RF342–1759

The DOE issued a Decision and Order denying an Application for Refund filed by Federal Refunds, Inc. (FRI), on behalf of Jerry's Clark in the Apex/Clark special refund proceeding. The applicant, a Milwaukee Clark dealer, derived his claimed gallonage figure by a process FRI terms "area averaging," i.e., by multiplying the number of months he had been in business by the average monthly volume of gasoline pumped by an average gas station in Milwaukee, as listed on a chart provided by FRI. Due to the sweeping generalizations upon which the estimation methodology was based and deficiencies in the data provided by FRI, the DOE determined that the application be denied.

Exxon Corp./Hydrocarbon Trading and Transport Co., Inc., 7/15/92, RF307–9331

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Hydrocarbon Trading & Transport Co., Inc. (HT&T). HT&T requested a refund based on the small claims presumption of injury for its purchases of 12,600,000 gallons of Exxon motor gasoline, and a refund based on its lost profits as a result of Exxon's allocation violations. HT&T obtained the motor gasoline for which it was requesting a price claim refund through exchange transactions with Exxon. The DOE determined that since the volumetric methodology applies only to product purchased from the consent order firm, HT&T was not entitled to receive the benefit of any presumptions. HT&T's price claim was therefore denied. With reference to the allocation claim, the DOE determined that this issue fell outside the scope of enforcement matters subject to the Exxon Consent Order. In addition, the DOE determined that HT&T was estopped from pursuing this before the DOE. That part of the Application for Refund which pertained to the allocation claim was therefore dismissed.

Florida Airmotive, Inc., 7/16/92, RR272–93

The DOE issued a Decision and Order concerning a Motion for Reconsideration that Florida Airmotive, Inc. (FAI) filed in response to the denial of its Application for Refund from the crude oil fund being disbursed under 10 CFR Part 205, Subpart V. FAI argued that, although it was a reseller of refined petroleum products, for those products claimed in its Application, FAI was an end-user, because the products had been used in its charter and school airplanes. Therefore, FAI asserted, it should not have to prove injury and it should be granted a refund for its claim. The DOE disagreed, noting that it had known that the gallons FAI claimed were used in the charter and school planes. But because FAI's reseller operations were not separate and distinct from its charter and school business, the DOE held that FAI should not be granted a refund for its end-user gallons. Therefore, the Motion for Reconsideration was denied.

Gulf Oil Corporation/Boss Linco Lines, Inc., 7/17/92, RF300–12740

The Department of Energy has issued a Decision and Order denying the Application of LK, on behalf of Boss Linco Lines Inc. in the Gulf Oil Corporation special refund proceeding. This Application was denied because LK, Inc. was found not to have demonstrated that it was authorized to file this Application for Refund.

Gulf Oil Corporation/Joy Oil Company Charles F. Ober & Son, Inc. Walter E. Schwab Company, 7/13/92, RR300–27, RR300–35, RR300–50

The Department of Energy (DOE) issued a Decision and Order denying Motions for Reconsideration filed by three applicants in the Gulf Oil Corporation special refund proceeding. Bassman, Mitchell & Alfano, on behalf of these applicants, sought refunds for gallons not included in Applications for Refund that these applicants previously filed. The DOE asked that the applicants explain the differences between their initial gallonage claims and the volumes for which they sought refunds in the Motions and that they certify that the revised gallonage claims were more reasonable. Because these applicants

were unable to explain these discrepancies, the Motions were denied.

Gulf Oil Corporation/Mumford, Inc., 7/17/92, RF300–12740

The Department of Energy has issued a Decision and Order denying the Application of Mumford, Inc. in the Gulf Oil Corporation special refund proceeding. This Application was denied because Mumford failed to provide any information in support of its refund claim other than a Gulf customer listing. That information is insufficient by itself to demonstrate the accuracy of this Application for Refund.

Mobil Oil Corp./Cantro Petroleum Corp., 7/14/92, RR225–41

On remand from the U.S. District Court for the District of Connecticut, the Department of Energy's Office of Hearings and Appeals (OHA) considered and rejected the Statement of Objections filed by Cantro Petroleum Corporation (Cantro) to a Proposed Decision and Order issued by OHA. In its Statement of Objections, Cantro asserted that it should receive an above-volumetric refund in order to compensate for the allegedly improper termination of an early payment discount by Mobil Oil Corp. OHA had found that Cantro should not receive an above-volumetric refund for those purchases or refined products from Mobil during the consent order period that were not paid for by Cantro within 10 days of delivery. OHA'S rejection of the Statement of Objections was based upon its finding that since purchases of products for which payment was not made within 10 days did not qualify for the early payment discount, Cantro was not overcharged or injured when Mobil refused to apply the discount to them.

Texaco Inc./Diablo Texaco, 7/15/92, RF321–18834

The Office of Hearing and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application for Refund that was filed in the Texaco refund proceeding by Wilson, Keller & Associates (WK&A) on behalf of Diablo Texaco and its owner, Gerald Greth. In that Decision, the OHA rescinded in part a refund that was granted to Mr. Greth on November 1, 1991. That refund was based upon Mr. Greth's certification in his application that he operated Diablo Texaco during the period from January 1979 through June 1983. In the course of investigating a possible conflict between Mr. Greth's application and one filed by another applicant at a later date, the OHA was informed by Mr. Greth that his actual dates of operation were July 1979 through June 1983. Mr. Greth and WK&A were therefore required to repay to the DOE $238, representing the amount of the refund attributable to the January–June 1979 period. The Decision also determined that because Mr. Greth's incorrect certification cast doubt upon the accuracy of the other representations made in his application, he would have to submit documentation in support of his amended dates of operation within 30 days of the date of the Decision.

Texaco Inc./Gene's Texaco, Gene's Texaco, 7/17/92, RF321–18283, RF321–18822

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Gene's Texaco in the Texaco Inc. special refund proceeding. On January 10, 1992, Wilson, Keller & Associates, Inc. filed an Application for Refund on behalf of Gene E. Yarrow (Yarrow), the owner of Gene's Texaco. Subsequently, on June 29, 1992, Yarrow filed another Application for Refund on behalf of Gene's Texaco using a form provided by Federal Refunds, Inc. (FRI). The DOE held that since Yarrow had falsely certified on his FRI application that he had not previously signed and authorized the filing of another Texaco refund application, it was appropriate to deny both of the applications. Consequently, both of Yarrow's applications were denied.

Wilbert Kampwerth, 7/13/92, RR272–91

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted in the Subpart V crude oil proceeding by Wilbert Kampwerth. Mr. Kampwerth had previously been granted a refund of $50 in *Charles Batschelett, et al.*, Case Nos. RF272–71403, *et al.* (July 10, 1989). The refund check was misplaced by Mr. Kampwerth and was never cashed. In accordance with the Limited Payability regulations (Public Law 100–86, Sec. 1003), on December 31, 1990, the Department of Treasury cancelled Mr. Kampwerth's refund check and the funds were retained by Treasury. On the basis of an explanation submitted by the applicant, the DOE granted the Motion for Reconsideration and will issue Mr. Kampwerth a new refund check for $50.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Dick's Arco *et al*	RF304–3708	07/15/92
Atlantic Richfield Co./Highway Petroleum Sales, Inc. *et al*	RF304–2938	07/17/92
Atlantic Richfield Co./Salmon Creek Arco,	RF304–9837	07/15/92
Walter and Son's Service	RF304–9838	
Atlantic Richfield Co./Walker's Deep Rock	RF304–3706	07/15/92
Joseph L. Tancredy	RF304–4867	
Hartsville Garage	RF304–12919	
Atlantic Richfield Co./West End Arco *et al*	RF304–12987	07/17/92
City of Boston	RF272–70694	07/15/92
City of Jordan *et al*	RF272–88500	07/13/92
Clark Oil & Refining Corp./Louis McLaurin Super 100 *et al*	RF342–109	07/15/92
Clark Oil & Refining Corp./Northern Illinois Gas Co	RF342–215	07/15/92
Gulf Oil Corp./Arthur L. Lee *et al*	RF300–16328	07/17/92
Gulf Oil Corp./Budney Fuel Oil Co. *et al*	RR300–38	07/17/92
Gulf Oil Corp./Colorado Prime *et al*	RF300–17713	07/17/92
Gulf Oil Corp./Fisher's Gulf *et al*	RF300–14543	07/17/92
Gulf Oil Corp./Frank's Gulf Station *et al*	RF300–16042	07/17/92
Gulf Oil Corp./Keller Independent School District *et al*	RF300–19000	07/17/92
Gulf Oil Corp./Mac's Gulf *et al*	RF300–17404	07/15/92
Gulf Oil Corp./Mel's Market *et al*	RF300–17500	07/16/92
Gulf Oil Corp./National Lime & Stone Co. *et al*	RF300–18520	07/15/92
Gulf Oil Corp./Seagate Gulf Service *et al*	RF300–16901	07/16/92
Gulf Oil Corp./Texas Industrial Services, Inc. *et al*	RF300–18602	07/15/92

Gulf Oil Corp./Whitaker's Grocery *et al*	RF300–16963	07/16/92
Moranco Drilling, Inc.	RF272–14039	07/13/92
Moranco Drilling, Inc.	RD272–14039	
Sawyer Drilling & Servc., Inc.	RF272–16287	
Sawyer Drilling & Servc., Inc.	RD272–16287	
Shelby Community School District *et al*	RF272–81571	07/16/92
Shell Oil Company/The Permian Corp.	RF315–7842	07/13/92
Chevron USA, Inc.	RF315–8859	
St. Mary's Church *et al*	RF272–89500	07/16/92
Texaco Inc./Fondren Park Texaco *et al*	RF321–231	07/13/92
Texaco Inc./Harvey Watson Texaco *et al*	RF321–15002	07/13/92
Texaco Inc./Penn Central Trans. Co.	RF321–13304	07/17/92
Union De Transports Aeriens	RF321–13306	
Capital International Airways	RF321–14695	
Town of Weathersfield *et al*	RF272–82582	07/16/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Avenue Oil Company	RF300–19897
Baldwinville Globe Texaco	RF321–7986
Borough of South Toms River, NJ	RF272–83764
Bud's Texaco on Filmore	RF272–5913
Bud's Texaco Service #2	RF321–13767
C.B. Concrete Co.	RF272–90457
Christy's Texaco	RF321–5939
Country Squire Texaco	RF321–7995
Ellis Brunner Texaco #1	RF321–12141
Fort Worth Independent School District.	RF272–76355
Fredrick A. Perry	RF304–12615
Frontier Transportation Co.	RF321–17606
Gulf to Bay Texaco	RF321–5321
Gurran Oil Company	RF321–8375
H & H Texaco	RF321–13356
Haskell's Texaco	RF321–7985
High Point Road Texaco	RF321–5907
Jim Hogg Rd. Texaco	RF321–12371
Joe's Texaco	RF321–18516
John Campbell's Texaco	RF321–10336
Kitch Texaco Service	RF321–7994
Layton's Texaco	RF321–8205
Lee Weitz Texaco	RF321–14664
Marks' Texaco Service	RF321–5324
Perry's Arco Service Station	RF304–12616
Quaker Village Texaco	RF321–5908
R. L. Drewry	RF321–8367
Ralph Leber Company, Inc.	RF321–18773
Rasdall Texaco	RF321–10136
Reisen Lumber & Millwork Co.	RF272–89913
Rogers Brothers Construction Co.	RF272–91224
S & S Trucking, Inc.	RF272–89665
Sagebiel's	RF321–8394
Schlegel Tennessee, Inc.	RF272–90194
Smithville Freight Lines, Inc.	RF321–18717
Sonny's Texaco	RF321–5330
South Main Texaco	RF321–5934
Thompson's Texaco	RF321–5323
Totman's Texaco	RF321–8223
Webb's Texaco	RF321–5418

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–21991 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; During the Week of July 27 through July 31, 1992

During the week of July 27 through July 31, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Du-Kane Asphalt Company, Inc., 7/27/92, RF272–24809, RD272–24809

The DOE issued a Decision and Order granting an Application for Refund filed by Du-Kane Asphalt Company, Inc., a producer of bituminous paving products, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the Application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $16,821.

Murphy Oil Corporation/Sky Petroleum, Ltd., et al., 7/29/92, RF309–496, et al.

The DOE issued a Decision and Order granting five Applications for Refund filed in the Murphy Oil Corporation special refund proceeding on behalf of Sky Petroleum, Ltd. (Sky), R.L. Jordan Oil Co., Inc., of North Carolina (Jordan) and its affiliates. Jordan and its affiliates are owned by Mr. R.L. Jordan. Mr. Jordan also owns a 50% partnership interest in Sky. The DOE determined that the Applications of Jordan and its affiliates should be considered together but that it would be inequitable to treat Sky as a part of the affiliated firm, because that would limit the portion of the refund due Mr. Jordan's partner in Sky. Therefore, the DOE granted the Applications filed on behalf of Jordan under the 40% presumption of injury and granted the Applications filed by Jordan and T.G. Proctor, Jr., respectively, under the $5,000 presumption of injury. The total amount of the refunds approved in this Decision and Order is $66,909 (comprised of $45,954 in principal and $20,955 in interest).

Shell Oil Company/Taugco, Inc., 7/27/92, RF315–4778

The DOE issued a Decision and Order granting an Application for Refund filed in the Shell Oil Company special refund proceeding on behalf of TAUGCO, Inc. (TAUGCO), a debtor-in-possession under Chapter 11 of the U.S. Bankruptcy Code. In its Application, TAUGCO claimed a refund based upon purchases of Shell petroleum products made by its predecessor, The Augsbury Corporation (Augsbury). Augsbury, prior to changing its name to TAUGCO, sold substantially all of its assets to Ultramar Petroleum, Inc. The DOE determined that the right to the refund was not among the assets transferred to Ultramar in the sale and

granted TAUGCO a refund of $9,035, including $2,777 in interest.

Texco Inc./Hercules Incorporated, 7/29/92, RF321–12257, RF321–14090

The DOE issued a Decision and Order concerning Applications for Refund filed by Hercules Incorporated (Hercules) and Magnox Pulaski Incorporated (Magnox), in the Texaco special refund proceeding. Both Applications were based upon purchases of Texaco refined products at a manufacturing facility located in Pulaski, Virginia (the Pulaski Plant). Although physical ownership of the facility had been transferred from Hercules to Magnox in 1986, the DOE found that the right to seek a refund based upon the Texaco purchases was retained by Hercules. Accordingly, the Magnox Application was denied and Hercules was granted a refund of $13,921, representing $10,541 principal and $3,380 interest.

Texaco Inc./Jim's Texaco, 7/29/92, RR321–25

Jim's Texaco, a retailer of Texaco refined products, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Applications that had been filed on its behalf in the Texaco Inc. Subpart V special refund proceeding. According to the Motion, the owner of Jim's Texaco signed the second refund Application without knowing that his daughter had filed a previous claim on his behalf. Under these circumstances, the DOE approved the Motion for Reconsideration and granted a refund of $5,230, including accrued interest.

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Clark County *et al*	RF272–89696	07/28/92
Gulf Oil Corporation/America's Keswick *et al*	RF300–17601	07/28/92
Gulf Oil Corporation/Moose River Country Store *et al*	RF300–18700	07/28/92
Gulf Oil Corporation/Razorback Aircraft Services *et al*	RF300–19705	07/29/92
Gulf Oil Corporation/Town of Oakland *et al*	RF300–19314	07/29/92
Seneca School District *et al*	RF272–84515	07/28/92
Texaco Inc./Broomfield Texaco *et al*	RF321–7294	07/28/92
Texaco Inc./Danny Thomas Texaco *et al*	RF321–170	07/28/92
Texaco Inc./Harold's Texaco *et al*	RF321–343	07/28/92
Texaco Inc./KSL Tire & Auto, Inc.	RF321–18978	07/27/92
United Refining Company/Townsend Oil Corp.	RF333–6	07/29/92
Shaner Brothers	RF333–17	

Dismissals

The following submissions were dismissed:

Name	Case No.
Arco Service Station	RF304–3828
Baytown Electric Corporation	RF300–18341
Bottineau County, ND	RF272–86289
Dickson, TN	RF272–88627
Emerald Arco	RF304–6397
Fats Truck Stop	RF300–18419
Frank's Arco Service	RF304–6398
Jones Oil Co	RF304–9310
Kelley Gas & Oil Co	RF304–3832
Kwik Stop Food Store	RF300–19545
Lamb Oil & Supply	RF300–18434
Lowell Joint Elementary	RF272–79705
Morty Hometown Service	RF304–3850
Mrs. Jos. V. Herrling	RF304–10772
Pawnee City Public Schools	RF272–91687
Ridley's Gulf	RF300–18333
Shawnee Local SD	RF272–87441
Stuart Public Schools	RF272–80524
Texaco Service	RF321–17935
University Arco Service	RF304–6388
Valley City 2	RF272–81449
Westside Texaco	RF321–11639
Wetzel's Service Station	RF304–3841

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–21992 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; During the Week of August 10 through August 14, 1992

During the week of August 10 through August 14, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Gulf Oil Corp./Cargo Carriers, Inc., Caprock, Inc., 8/10/92, RF300–9683, RF300–9684

The DOE considered two Applications for Refund filed in the Gulf Oil Corporation refund proceeding by Cargo Carriers, Inc. (CCI) and Caprock, Inc. (Caprock). CCI requested a refund based on purchases of Gulf marine diesel fuel made by its reseller subsidiary, Tri-State Marine Service Company. It also requested a refund based on its own purchases of marine fuel from Tri-State. CCI, an end-user of this marine fuel in a tow-boat operation, requested that the end-user presumption of injury be applied to this refund claim. Caprock, a CCI affiliate, requested a refund based on purchases of Gulf fuel made for its end-use as a transporter of cattle and cattle feed. The DOE found that it would be proper to apply both the end-user and small claims presumptions of injury to the CCI/Tri-State purchases, and thereby allow the firms to receive more than a $5,000 refund. In this regard, the DOE noted that the two firms were not operationally distinct, and that the two refund requests should be considered together under the small claims injury presumption for resellers. CCI's total refund, including interest, was $9,317. In considering the Caprock refund, the DOE found that Caprock and CCI were operationally distinct, and that Caprock, as a transporter of cattle and cattle feed grain, was in a completely different business from CCI. Accordingly, Caprock was granted a full end-user refund of $1,114, including interest.

Northeast Petroleum Industries/ Massachusetts, 8/10/92, RM25–260

The DOE issued a Decision and Order concerning the Motion for Modification filed by the Commonwealth of Massachusetts (Massachusetts) requesting approval to use $20,000 of its uncommitted Northeast second-stage monies to fund a national conference

and symposium about alternative fuel vehicle technology. While the DOE has not previously approved a proposal to fund an alternative fuel vehicle conference, it has granted second-stage monies in separate decisions to alternative fuel oriented-programs and energy conservation conferences. Since the conference would result in restitution to injured citizens, Massachusetts' proposal was approved.

Texaco Inc./Elks Texaco et al., 8/11/92, RR321–13 et al.

Eight Texaco retailers each filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications, that each had previously filed. In the Motions, the retailers stated that they had signed the second application, and certified in it that no other application had been filed, because they believed that this was in accordance with the instructions that they had received from Texaco. In considering the Motion, the DOE found that the retailers erroneously filed the second application because they were confused by Texaco's sending another application form and not for the purpose of obtaining a duplicate refund. Accordingly, the Motions for Reconsideration were approved and the retailers were granted refunds totalling $27,367.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Arnholt Gulf Service *et al*	RF300–19538	08/12/92
Gulf Oil Corporation/Atkins Petroleum Products, Inc. *et al*	RF300–20200	08/14/92
Gulf Oil Corporation/Camillus Police Dept. *et al*	RF300–19500	08/12/92
Gulf Oil Corporation/Freeway Gulf *et al*	RF300–15828	08/11/92
Gulf Oil Corporation/Genesco, Inc. *et al*	RF300–18900	08/12/92
Gulf Oil Corporation/Linger Trucking Company *et al*	RF300–16906	08/11/92
Nelson-Deppe, Inc	RF272–48587	08/12/92
Springfield School District *et al*	RF272–79139	08/11/92
Texaco Inc./Bernie Widener's Texaco #1 *et al*	RF321–817	08/12/92
Texaco Inc./Bill's Falcon Texaco *et al*	RF321–832	08/11/92
Texaco Inc./C.A. Dillon Supply Company *et al*	RF321–15869	08/14/92
Texaco Inc./Edwards' South End Texaco *et al*	RF321–10691	08/14/92
Texaco Inc./Guy's Texaco *et al*	RF321–325	08/12/92
Texaco Inc./Rock's Texaco Truck Center	RF321–11351	08/11/92
J.H. Buhrmaster Co., Inc	RF321–14290	
Conservative Gas	RF321–14328	
Texaco Inc./USAIR, Inc	RF321–4439	08/13/92
Norfolk & Western Railway Co	RF321–14264	
Northeast Airlines, Inc	RF321–14265	
Southern Railway Co	RF321–14266	

Dismissals

The following submissions were dismissed:

Name	Case No.
Bowlin's Flying C Ranch	RF321–14252
Carnival Cruise Lines, Inc	RF307–10215
East End Motors, Inc	RF321–10895
Gainesville Regional Utilities	RF307–10216
H.G. Hamilton	RF321–14258
Jack Orrand's Texaco	RF321–10903
Jack's Texaco	RF321–18612
Mc Cormick Texaco	RF321–18985
Robbie's Texaco	RF321–10942

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–21993 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) announces proposed procedures for the disbursement of $9,254, plus accrued interest, that Automatic Comfort Corporation remitted to the DOE pursuant to a consent order executed on April 14, 1983. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate on or before October 13, 1992 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case Number LEF–0005.

FOR FURTHER INFORMATION CONTACT: Max William Yano, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Automatic Comfort Corporation to the DOE to settle possible pricing and allocation violations with respect to its sale of refined petroleum products. The DOE is currently holding $9,254 in an interest-bearing escrow account pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: September 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Dated: September 2, 1992.

Name of Petitioner: Automatic Comfort Corporation.

Date of Filing: December 4, 1989.

Case Number: LEF–0005.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. See 10 CFR part 205, subpart V. On December 4, 1989, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Automatic Comfort Corporation (Automatic), which is now Connecticut Petroleum Marketers.

I. Background

Automatic was a branded independent marketer, as that term is defined in the Emergency Petroleum Allocation Act of 1973, located in East Hartford, Connecticut. During the period March 1, 1979, through September 30, 1979, the ERA conducted an audit of Automatic's records. Based upon the results of that audit, the ERA concluded that the firm had violated the provisions of the Mandatory Petroleum Price regulations. In order to settle these matters, on April 14, 1983, Automatic and the DOE entered into a Consent Order that resolved all alleged violations for the entire January 1, 1973, through January 28, 1981, regulatory period (the Consent Order period). Although the Consent Order does not state that Automatic committed any of the alleged violations and Automatic does not admit any of the violations, the remedy spelled out in the Consent Order involves refunds to specific wholesale and end-user purchasers and is based upon the ERA audit findings. The specific provisions of the Consent Order required Automatic to implement a program of refunds in the aggregate amount of one hundred fifteen thousand dollars ($115,000), and to distribute these refunds to Automatic's customers and to the United States Treasury as follows:

(a) Within thirty (30) days of the effective date of the Consent Order, Automatic shall pay the sum of forty thousand dollars ($40,000) by certified check payable to the United States Treasury;

(b) Within nine (9) months of the effective date of the Consent Order, Automatic shall refund the sum of eighteen thousand two hundred seventy-seven dollars and fifty cents ($18,277.50) to eligible end-user customers; and

(c) With eighteen (18) months of the effective date of the Consent Order, Automatic shall refund the sum of fifty-six thousand seven hundred twenty-two dollars and fifty cents ($56,722.50) to eligible dealer customers.

Automatic satisfied all of these requirements except that, in making the refunds pursuant to the provisions of paragraphs (b) and (c) above, the firm was unable to locate, and consequently unable to repay 36 of the specified end-user customers that were to receive refunds, and 3 of the specified dealer customers. As a result, Automatic was unable to refund $9,254 of the total refunds specified in paragraphs (b) and (c). That sum is the subject of the present proceeding.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205 subpart V. The Subpart V process is generally used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the case of Office of Enforcement, 9 DOE ¶ 82,508 (1981); and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

The Automatic case comes to us in a posture very different from the usual subpart V refund case. Ordinarily, there are no findings or even indications of specific injury in a subpart V proceeding. Empire Gas Corp., 21 DOE ¶ 85,101 (1991); and Time Oil Co., 20 DOE ¶ 85,698 (1990). It is precisely the absence of this material that led us to adopt the volumetric refund approach that is typically employed in these proceedings. Northeast Petroleum Industries, Inc., 20 DOE ¶ 85,405 (1990); Atlantic Richfield Co., 17 DOE ¶ 85,069 (1988); and Gulf Oil Corp., 16 DOE ¶ 85,381 (1987). In this case, not only are there very substantial indications of individual injury but the consent order firm has made specified refunds to most of a group of specified customers based upon this data. As a result, we see no reason to adopt the volumetric refund methodology in this proceeding. Underscoring this tentative conclusion is that any volumetric factor calculated in this proceeding—even were we in possession of reliable consent order period sales gallonage data for Automatic—would be infinitesimally small. This results because the remaining money to be distributed is small, and the Consent Order encompasses an eight-year period. Indeed, we think it very likely that any such volumetric would be so small that no purchaser could even approach the $15.00 minimum refund prescribed in above Subpart V proceedings. For these reasons, we proposed that we attempt to locate the named purchasers that Automatic could not find, and effectuate the refunds specified in the Consent Order. Since the Consent Order is silent as to the disposition of any remaining unrefunded monies, we also proposed that any residual funds be paid as indirect restitution under the Petroleum Overcharge Distribution and Restitution Act of 1986.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Automatic Comfort Corporation pursuant to the Consent Order executed on April 14, 1983, will be distributed in accordance with the foregoing Decision.

[FR Doc. 92–21994 Filed 9–10–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4192–9]

Proposed Maximum Pressures for Rule-Authorized Enhanced Recovery Injection Wells in Michigan; First Group Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Maximum Injection Pressure in Fields with Rule-Authorized Enhanced Recovery Injection Wells in Michigan; First Group Fields.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is proposing pressure gradients for calculating the maximum allowable liquid injection pressure for rule-authorized Class II enhanced recovery injection wells in 14 of 45 Michigan fields currently approved by the State of Michigan for enhanced recovery operations. (These 14 fields include 20 to 68 enhanced recovery units recognized by the State). Therefore, operators of rule-authorized enhanced recovery wells in the 14 fields must limit their liquid injection pressure as directed in this action, if the action is finalized as proposed. After final publication in the **Federal Register,**

these actions will become part of the applicable Underground Injection Control program for the State of Michigan, administered by Region 5 of USEPA, promulgated under the provisions of the Safe Drinking Water Act.

DATES: The USEPA requests public comments on today's proposed rules. Comments will be accepted until October 13, 1992. Comments postmarked after the close of the comment period will be stamped "Late". Notice was given on July 31 to those persons on a state-wide mailing list who indicated an interest in Class II injection wells in Michigan. To request that a public hearing be held, contact the person listed below.

ADDRESSES: The technical basis for each of the proposed pressure gradient is found in the Administrative Record for this action, which is available for viewing at the USEPA Region 5 office listed below. A packet of materials summarizing the basis is also available for viewing at three locations in Michigan. These locations can be obtained from the person listed as the contact for further information below. Submit written comments to: USEPA Region 5 (WD–17J), Underground Injection Control Section, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, Attn: Richard J. Zdanowicz, Chief.

FOR FURTHER INFORMATION CONTACT: Leah Haworth, Underground Injection Control Section, Water Division (312) 886–6556, 17th floor Metcalfe Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION:

I. Background

The Underground Injection Control program for the State of Michigan is administered by the USEPA. Federal regulations at 40 CFR 147.1154 stipulate that the Regional Administrator shall establish maximum injection pressures for rule-authorized enhanced recovery injection wells in Michigan fields, after proper notice and opportunity for public comment and public hearing. This notice is the first step in that process. It concerns liquid injection in 14 of 45 approved enhanced recovery fields in Michigan. The Region intends to propose an action during 1993 for the remainder of the fields with rule-authorized enhanced recovery wells. Some of the 45 fields approved by the State of Michigan for enhanced recovery are authorized by permit, for example if injection wells were put into operation after June 1984.

The USEPA originally proposed on September 2, 1983, that injection pressure in rule-authorized, Class II enhanced recovery wells in Michigan be limited under the same regulation as was promulgated for similar wells for brine disposal (48 FR 40098 *et seq.).* Federal regulations at 40 CFR 147.1153 specify that the owner or operator of rule-authorized brine disposal wells shall limit injection pressure to the lesser of:

(a) A value which will ensure that operation of the well does not fracture the confining zone adjacent to the lowermost Underground Source of Drinking Water (USDW) or cause movement of fluids into USDWs; or

(b) A value of well head pressure calculated using a formula listed in § 147.1153. This formula used a fixed value for fracture pressure gradient of 0.80 pounds per square inch per foot (psi/ft).

In the final rule, issued May 11, 1984, USEPA determined that the use of a fixed fracture pressure gradient was not an appropriate option for enhanced recovery operations (49 FR 20138 *et seq.).* Instead, injection well owners and operators were required to submit site-specific data for the Regional Administrator to use as a basis for issuing maximum pressures. In the interim, owners and operators of rule-authorized enhanced recovery wells were required to limit their injection pressure as necessary to meet the standard listed in (a) above [40 CFR 144.28(f)(3)(ii)].

II. Proposed Field Rules

Today, USEPA is proposing to use the same pressure formula promulgated for brine disposal wells, but to replace the fixed fracture pressure gradient in use for brine disposal wells with the field-specific gradients listed in Table 1. Therefore, USEPA proposes that rule-authorized, enhanced recovery, injection wells in Michigan operate below a maximum liquid injection calculated using the following formula:

$$Pm = (FPG - 0.433\ Sg)d$$

Where:

Pm = Injection pressure at the wellhead (psi)
FPG = Fraction pressure gradient from Table 1 (psi/ft)
Sg = Specific gravity of the injection fluid (dimensionless)
d = Depth to top of injection zone (ft)

As explained in the May 11, 1984 final rule for the State of Michigan (49 FR 20163), USEPA used instantaneous shut-in pressures (ISIP) and step rate test results from the injection zones of enhanced recovery injection wells in the given fields to choose the pressure limit variables proposed in this notice. The Agency used data from the injection zone, rather than the confining zone adjacent to the USDW, not because it wished to change the regulatory standard, but because the injection zone typically is the only formation for which fracture pressure information is available.

In most cases, where multiple enhanced recovery injection wells are located in multiple sections of a field, at least one data point per section and at least three data points per field were used to establish the proposed fracture pressure gradient. Where fewer than three injection wells are operating, fewer data points were sometimes used. Where multiple data points were available from the same formation, the proposed regulatory limit was chosen as the average value of fracture pressure gradient for that formation. This is appropriate because using data from the injection zone rather the confining zone already confers an adequate degree of conservatism to the process.

III. Alternative Maximum Pressure

USEPA make no presumption of inherent danger in enhanced recovery injection pressures which exceed the fracture pressure of the injection zone, but these operations must be assessed more carefully than is provided for in this action process. Federal regulations make provision for this in two ways. First, after this action is finalized, owners and operators may submit a request that the USEPA establish an alternative maximum pressure for a particular field and formation. This request may allow injection at higher pressures if the operator can demonstrate to the satisfaction of the Agency that the desired injection pressure will not fracture the confining layer adjacent to the lowermost USDW and that there will be no migration of fluids into a USDW. The Agency may grant such a request after notice and opportunity for public comment and a public hearing, according to the provisions of 40 CFR part 124. Second, if this request is denied, the owner or operator may apply for a UIC permit under 40 CFR 144.25(c). The final permit decision, including permit conditions which the owner or operator considers to be inappropriate, may be subject to administrative review pursuant to 40 CFR 124.19. To be added to a mailing list to receive notice of Agency decisions in Michigan regarding Alternative Maximum Pressures or Class IIR permits, contact USEPA, Region 5 Underground Injection Control Section at the address given above.

IV. Notice to Owners and Operators

After this action is finalized, USEPA will send certified written notices to owners and operators informing them of the applicable formula to be used in determining the maximum allowable liquid injection pressure. Thereafter, owners and operators who exceed the injection pressure established under the formula or the alternative maximum pressure approved by USEPA will be considered in violation of 40 CFR 147.1154(a), and may be subject to enforcement action, including the assessment of civil penalties and the issuance of compliance orders. If an owner or operator does not receive a certified written notice from USEPA within thirty (30) days after the final notice is published in the **Federal Register**, he or she should immediately contact USEPA, Region 5 at the telephone number given above, to avoid the possibility of violating UIC regulations.

Dated: July 27, 1992.

Dale S. Bryson,

Director, Water Division, Region 5, U.S. Environmental Protection Agency.

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES

Field	Formation	County	Township/range/section	FPG (psi/ft)
Aurelius 35	Niagaran Reef	Ingham	T2N,R2W,S26,35,36	0.65
Beaver Creek	Richfield	Crawford/Kalkaska	T25N,R5W, S12,13,24 and T25N,R4W,S7,8,16–21,28,29.	1.07
Bentley-Dundee	Dundee	Gladwin	T17N,R2E,S18,19,20	1.15
Billings	Dundee	Gladwin	T17N,R1E, S2,3,10,11,T17N,R1E, S12,13 and T17N,R2E,S18.	1.12
Billings 2 Unit:				
Billings-Bentley Unit:				
Chester	A1 Carbonate & Niagaran	Otsego	T30N,R2W, S7,8,17,18,19,20, T30N,R2W, S21,22.	0.99 0.78
Chester 18 Unit:				
Chester 21 Unit:				
Columbus 3	Niagaran	Saint Clair	T5N,R15E, S3,10 and T6N,R15E, S34.	0.79
Cranberry Lake	Richfield	Clare	T20N,R6W,S1,2,11,12	1.10
Hayes	Salina-Niagaran	Otsego	T29N,R4W,S15,T29N,R4W,S21,28	0.67
Hayes 15 Unit:				
Hayes 21A Unit:				
Headquarters	Richfield	Roscommon	T21N,R3W, S19,29,30, T21N,R3W, S29,30,32,33.	1.22
Headquarters Unit:				
Headquarters-Sour Unit				
Ingham 13	Salina-Niagaran	Ingham	T2N,R1E,S13	0.76
Kalkaska "21"	Salina-Niagaran	Kalkaska	T27N,R8W,S22	0.92
Onondaga 10	Salina-Niagaran	Ingham	T1N,R2W,S2–4,10,11,14	0.61
Pennfield 35	Niagaran Reef	Calhoun	T1S,R7W,S35	0.60
Rose City	Richfield	Ogemaw	T23,24N,R2E, S3,19–21, 27–30,32–35, T24N,R1,2E,S25, T24N,R1E, S21.	1.07
Rose City Unit:				
Rose City Central Unit:				
Rose City West Unit:				

[FR Doc. 92–21971 Filed 9–10–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4203–8]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 24, 1992 through August 28, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 20, 1992 (57 FR 12499).

Draft EISs

ERP No. D–BLM–J02023–WY Rating EC2, Methel Hanna Basin Coalbed Methane Gas Production Project, Construction, Operation, Maintenance and Abandonment, Approval, Drilling Control, COE section 404 and EPA RCRA Permits and Right-of-Way Grant, Carbon County, WY.

Summary

EPA had environmental concerns with the proposed project regarding the potential impacts to surface and ground water, wetlands and reasonable alternatives to the project.

ERP No. D–FHW–C40126–NJ Rating EC2, NJ–21 Freeway Extension Project, Construction and Modification, Monroe Street in Passaic to Route 46/Lexington Avenue Intersection, Funding, and section 10 and 404 Permits, Cities of Passaic and Clifton, Passaic County, NJ.

Summary

EPA expressed concerns about the proposed project because of insufficient mitigation of the preferred alternative's impacts to aquatic resources and water quality. Moreover, the document does not fully evaluate cumulative and secondary impacts of the proposed project. EPA requested additional information to assess the above issues/impacts be included in the final EIS.

ERP No. D–NPS–J61086–MT Rating LO1, Grant-Kohrs Ranch National Historic Site, General Management Plan and Development Concept Plan, Implementation, Northern Rockies, Powell County, MT.

Summary

EPA had no environmental objections with the proposed project.

ERP No. D–SWF–H64001–IA Rating LO, Walnut Creek National Wildlife Refuge and Prairie Learning Center Master Plan, Restoration and Reconstruction, Prairie City, Jasper County, IA.

Summary

EPA had no objections to the proposed project.

ERP No. D–TVA–E99014–00 Rating EU2, Tennessee River Chip Mill Barge Terminals, Construction and Operation, Issuance of Barge Terminal Permit, section 10 and 404 Permits, several Counties, AL and TN.

Summary

EPA individually rated each alternative: Alternative 1—LO, Alternative 2—EU2, Alternative 3—EO2. The major environmental issues associated with the implementation of the action alternatives relate to potential water quality and wetland impacts; loss of habitat, biodiversity, ecologically sensitive areas, threatened and endangered species and cumulative effects. Additional information requested for the FEIS includes compliance rates for the present voluntary BMPs for existing timber harvesting in affected TN, AL and GA.

ERP No. D–UAF–E11028–GA Rating EC2, Moody Air Force Base Beddown of a Composite Wing for F-16, A/OA–10 and C–130 Aircraft, Implementation, Lowndes and Lanier Counties, GA.

Summary

EPA had environmental concerns about certain unsubstantiated conclusions made regarding the proposed change in aircraft mix at Moody AFB. Additional information was requested in the final document to determine the validity of the assertion that the consequences associated with increased aircraft operations, changes in automobile traffic patterns, waste management and elevated noise were insignificant.

ERP No. DA–AFS–J65132–WY Rating EC2, Bighorn National Forest Land and Resource Management Plan, Updated Information, Amendment to the Timber Harvest Standards and Guidelines, Bighorn Mountain Range, Bighorn, Johnson, Sheridan and Washakie Counties, WY.

Summary

EPA expresses environmental concerns regarding the proposed project. Additional information on water quality, riparian and wetland areas and cumulative updates.

Final EISs

ERP No. F–BIA–K80563–00, Fort Mojave Indian Reservation Planned Community Development, Mojave Valley Resort, Lease Approval and Site Selection, section 404 Permit and Coast Guard Permit, San Bernardino Co., CA, Clark Co., NV and Mohave Co., AZ.

Summary

EPA expressed concern regarding whether the proposed project is in compliance with section 404 of the Clean Water Act. EPA recommended that a section 404 Permit should not be issued until this information is provided. EPA also requested clarification regarding the protection of the air quality and water quality standards and specifically who is the responsible party, the Fort Mohave Tribe or the State of Arizona.

ERP No. F–COE–E36168–FL Central and Southern Florida Project, Flood Control and Canal 51-West End, Control Structures 155A, 360, Pump Station 319 and Levee Construction, Implementation, Palm Beach County, FL.

Summary

EPA's major concerns with the original proposal have been satisfactorily addressed. The final design of this project remains to be determined, but it appears that a plan to collect a majority of the canal's discharges for use within the Everglades system is feasible.

ERP No. F–IBR–K34007–CA, Lake Berryessa Reservoir Area Management Plan, Land and Water Management, Implementation, Napa County, CA.

Summary

EPA's concerns were adequately addressed in the FEIS.

ERP No. F–UMT–C54005–NY, Queens Subway Improvement Options Study, 63rd Street to Archer Avenue, Funding, Queens, NY.

Summary

EPA's concerns with the draft EIS have been addressed in the final document. Accordingly, EPA believed that the project will not result in any significant adverse environmental impacts.

ERP No. FS–AFS–J65102–CO, San Juan National Forest Land and Resource Management Plan Amendment, Timber Management, Archuleta, Conejos, Hinsdale, La Plata, Mineral, Montezuma, Rio Grande, San Juan and San Miguel Counties, CO.

Summary

EPA had environmental concerns with the proposed project. There were some additional concerns relating to the adequacy of the water quality data that should be addressed.

ERP No. FS–AFS–J65167–MT, Lost Silver Timber Harvest Project, Timber Sale and Road Construction, Additional Information, Flathead National Forest, Hungry Horse Ranger District, Flathead County, MT.

Summary

EPA had environmental concerns regarding the increased sediment levels to area drainages.

Dated: September 7, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–21997 Filed 9–10–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4203–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements Filed August 31, 1992 Through September 4, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920355, Final EIS, AFS, NM, Hay Timber Sale, Timber Harvest and Road Construction, Implementation, Lincoln National Forest, Cloudcroft District, Otero County, NM, Due: October 13, 1992, Contact: Tim Meyer (505) 682–2551.

EIS No. 920356, Final EIS, SFW, VA, MD, Chincoteague National Wildlife Refuge (NWR) Comprehensive Management and Development Plan, Implementation and Land Acquisition, Accomack Co., VA and Worcester Co., MD, Due: October 13, 1992, Contact: John D. Schroer (804) 336–6122.

EIS No. 920357, Final EIS, AFS, OR, Bergan Fire Salvage Timber Sale and other Fire Recovery Projects, Silver Creek Wild and Scenic River Designation, Implementation, Snow Mountain Ranger District, Ochoco National Forest, Harney County, OR, Due: October 13, 1992, Contact: Jim Keniston (503) 573–7292.

EIS No. 920358, Final EIS, COE, HI, Kawainui Marsh Flood Control Project, Coconut Grove Residential Area, Implementation, Island of Oahu, City and County of Honolulu, HI, Due: October 13, 1992, Contact: Margo Stahl (808) 438–7006.

EIS No. 920359, Final SUPPLEMENT, NPS, CA. Yosemite National Park, General Management Plan, Implementation, Updated Information, Concession Services Plan, Tuolumne, Mariposa and Madera Counties, CA, Due: October 13, 1992, Contact: Michael Finley (209) 372–0202.

EIS No. 920360, Draft EIS, BLM, UT, UT–88 south of Ouray to I–70 Connector, Construction and Operation, Right-of-Way Approval and Funding, Uintah and Grand Counties, UT, Due: December 10,

1992, Contact: Daryl Trotter (801) 259–6111.

EIS No. 920361, Draft EIS, FTA, PA, Phase I Airport Busway/Wabash Hovway Corridor Construction, Downtown Pittsburgh to the Borough of Carnegie, Allegheny County, PA, Due: October 26, 1992, Contact: Ken Mowll (202) 366–0096.

EIS No. 920362, Final EIS, AFS, WA, Kettle River Key Open-Pit Gold Mining Expansion Project, Construction and Operation, Plan of Operation Approval and NPDES Permit, Colville National Forest, Republic Ranger District, Ferry County, WA, Due: October 13, 1992, Contact: Patricia Egan (509) 775–3305.

Dated: September 8, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–21996 Filed 9–10–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00333; FRL–4072–4]

Alkyl Amine Hydrochloride; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Document (RED) for the active ingredient alkyl amine hydrochloride, and the start of a 60–day public comment period. The RED for alkyl amine hydrochloride is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical, and presents the Agency's determination regarding which pesticidal uses of alkyl amine hydrochloride are eligible for reregistration.

DATES: Written comments on the RED must be submitted by November 10, 1992.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00333" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED, or a Red Fact Sheet, contact the Public Response and Program Resources Branch, in rm. 1132, CM #2, at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED should be directed to the chemical review manager, Betty Crompton, at (703) 308–8067.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredient: Alkyl amine hydrochloride. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical alkyl amine hydrochloride is substantially complete. EPA has determined that all currently registered products containing alkyl amine hydrochloride as an active ingredient are eligible for reregistration.

All registrants of products containing alkyl amine hydrochloride have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency and if any of those comments impact on the RED, EPA will issue an amendment to the RED and publish a **Federal Register** Notice announcing its availability.

Dated: August 11, 1992.

David Baralo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 92–21801 Filed 9–10–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

City of Los Angeles/American President Lines, Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003938–003.

Title: City of Los Angeles/American President Lines, Ltd. Terminal Agreement.

Parties:

The City of Los Angeles ("City")
American President Lines, Ltd. ("APL").

Synopsis: The modification adds 15.15 acres to the premises leased to APL by the City and sets the level of compensation for the third quarter of the period beginning January 1, 1992 and ending December 31, 1996.

Dated: September 8, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–21940 Filed 9–10–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92P-0187]

Canned Coho Salmon Deviating from Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Hegg and Hegg Smoked Salmon, Inc., to market test a product designated as "skinless and boneless coho salmon" that deviates from the U.S. standards of identity for canned Pacific salmon (21 CFR 161.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 10, 1992.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4122.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Hegg and Hegg Smoked Salmon, Inc., 801 Marine Dr., Port Angeles, WA 98362-2103.

The permit covers limited interstate marketing tests of a product designated as "skinless and boneless coho salmon." The test product deviates from the U.S. standards of identity for canned Pacific salmon (21 CFR 161.170) in that the skin and all bones are removed, not just the backbone as provided in paragraph (a)(3)(ii) of this section. The test product meets all requirements of the standards with the exception of this deviation. The purpose of this variation is to more clearly identify the product for those consumers who desire skinless and boneless salmon.

For the purpose of this permit, the name of the test product is "skinless and boneless coho salmon." The label bears nutrition information in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 11,000 cans of the test product, each can weighing 106.3 grams (3 3/4 ounces). The test product is to be manufactured at Hegg and Hegg Smoked Salmon, Inc., 801 Marine Dr., Port Angeles, WA 98362-2103 and distributed throughout the United States.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101.

While the labeling of the test product complies with FDA's current regulations, the agency has published two proposals in the **Federal Register** that would (1) amend the current regulations pertaining to the content of nutrition information on food labels (56 FR 60366, November 27, 1991) and (2) revise the nutrition labeling format on food labels (57 FR 32058, July 20, 1992). A notice that will state the date after which labels must comply with the final regulations that the agency issues based on these proposals will be published shortly. The test product may need to be relabeled to comply with any changes in the nutrition labeling regulations that the agency ultimately adopts.

This permit is effective for 15 months beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 10, 1992.

Dated: August 28, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-21915 Filed 9-10-92; 8:45 a.m.]

BILLING CODE 4160-01-F

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Food Advisory Committee scheduled for September 14 and 15, 1992. The meeting was announced by a notice in the **Federal Register** of August 19, 1992 (57 FR 37549). FDA plans to reschedule this meeting later this fall.

FOR FURTHER INFORMATION CONTACT: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFF-6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5140.

Dated: September 8, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-22078 Filed 9-9-92; 11:20 am]

BILLING CODE 4160-01-F

Centers for Disease Control

[Announcement Number 282]

Demonstration of a Model Wellness Community in Wheeling, West Virginia

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a grant program to demonstrate a community wellness model in Wheeling, West Virginia. Funds were designated in Senate Report 102-104, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill, 1992, for the demonstration in Wheeling, West Virginia, of a computerized system to track and analyze lifestyle and disease trends throughout the aging process, enhance health promotion and disease prevention programs, and thus, improve the health of participants.

The Public Health service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Educational and Community-Based Programs. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Eligible Applicants

Assistance will be provided only to Wheeling Hospital, Wheeling, West Virginia. No other applications will be solicited.

Wheeling, West Virginia, is the most appropriate community and the Wheeling Hospital is the most appropriate organization to conduct the work under this grant because:

A. Congress, through Senate Committee Report 102-104, directed that CDC conduct a demonstration of a model wellness community in Wheeling, West Virginia.

B. Wheeling Hospital is the most comprehensive provider of health care services in the Wheeling, West Virginia area, and has implemented a major community-wide initiative to improve the health and well being of area residents through a comprehensive program of health education, fitness, prevention, rehabilitation, outreach, and research. As part of this effort, Wheeling Hospital has developed new models for the delivery of health education and wellness information and identified innovative methods to more effectively disseminate lifestyle-related health and wellness information by establishing and using an array of community outreach programs including:

1. Lifespan—A health and fitness education program with training manual for senior citizens.

2. Corporate Nutrition and Fitness Competition—A team health improvement competition implemented at area work sites.

3. Tobacco Free Youth—A community-wide initiative to reduce or eliminate the sale of tobacco products to minors.

4. Senior Wellness Outreach Program—A comprehensive series of lectures, presentations, and health screenings conducted at churches and elderly residences throughout the community. (This program received the Department of Health and Human Services' Community Health Promotion Award in 1988).

5. "Well-Prepared" Program—A comprehensive wellness education model program for elementary school children and their families which is currently being pilot tested in the Ohio County School System. Development of this program is funded by a $215,000 grant from the Claude Worthington Benedum Foundation.

6. Healthy Holiday Cookbook—A collection of recipes for traditional holiday dishes with reduced cholesterol levels.

7. Other—The Wheeling Hospital is also the primary sponsor of a comprehensive community outreach program originally funded by the Bayer Corporation. In addition, Wheeling Hospital has conducted a number of wellness-related research projects including studies on the effect of exercise on appetite, the effect of alcohol consumption on physiologic parameters during immersion in a hot tub, and the effect of handrail support upon the results of stress tests.

C. Wheeling Hospital has developed a computerized system to combine health self-assessments with longitudinal data collection to create a wellness database. This computerized system will be utilized to improve the health of the participants and track lifestyle trends throughout the aging process. The computerized wellness database will allow for innovative wellness modeling as recommended in the congressional appropriation report.

D. Since 1975, Wheeling Hospital has been the anchor of a major health care complex at its medical park campus location including the following operating divisions: Continuous Care Center, Wellness Center, Ambulatory Care Center, Wheeling Dialysis Center, Family Health Center, Professional Center, and an Emergency/Trauma Center.

E. Most recently, Wheeling Hospital has announced plans for a Wellness and Rehabilitation Center to be located at its Wheeling, West Virginia, medical park campus to consolidate existing wellness, rehabilitation, and health education programs into a comprehensive, modern facility to better meet the needs of Wheeling area residents. The project is designed not only to expand existing programs but also to continue to initiate innovative models for delivery of health education, fitness, and wellness services to improve the health and lifestyle of the entire Wheeling community.

Therefore, there is compelling evidence that the Wheeling Hospital, Wheeling, West Virginia, is uniquely capable of using their existing infrastructure to establish a computerized system to facilitate programs which improve the health of participants and demonstrate the effectiveness of a model wellness program for other communities throughout the nation.

Availability of Funds

Approximately $890,000 is available in FY 1992 to fund Wheeling Hospital, Wheeling, West Virginia. It is expected that the award will begin on or about September 30, 1992, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

The purpose of this grant is to demonstrate the effectiveness of a community wellness model program in Wheeling, West Virginia. A computerized system will be used to design and implement programs to improve the health of the participants by tracking lifestyle and disease trends throughout the aging process. Users' workstations, located throughout the community, will enable ordinary citizens to access and update their own health information over the course of their lives. The resulting data base will be used by health personnel, researchers, and public health planners to identify trends; compare health profiles; identify training needs; and research to prevent disease and injuries and improve health.

Program Requirements

CDC recognizes the diversity of activities and variations in the prevalence of disease inherent to this demonstration. However, during the first year, the grantee must meet the following minimum requirements:

A. Develop specific priorities.

B. Identify sufficient appropriately trained staff to conduct the proposed activities.

C. Conduct the activities described in the application in a manner that will ensure accomplishment of the objectives.

D. Conduct a strong, scientifically based evaluation designed to determine the effectiveness of the activities and achievement of the stated objectives.

During subsequent years, the recipient is expected to submit a progress report describing the accomplishments during the previous budget period and a program plan and objectives for the new budget period for obtaining/developing well documented intervention strategies.

Evaluation Criteria

The grant application will be reviewed and evaluated according to the following criteria:

A. Degree to which the applicant demonstrates an understanding of the problem and the purpose of the award. (20 Points).

B. Degree to which the objectives are consistent with the stated purpose of the application and the ability to meet the objectives and timetable within the specified period. (20 Points).

C. Adequacy of plans to monitor progress toward meeting the program activities and objectives, establishing computer access sites, total utilization and utilization by selected target populations. (20 Points).

D. Adequacy of the plan for developing data and criteria to conduct a comprehensive evaluation of both the general approach and specific accomplishments of the project. (20 Points).

E. Degree to which the applicant demonstrates the capability to provide the staff and resources necessary to perform and manage the project. (20 Points).

F. Degree to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds. (Not Scored).

Executive Order 12372 Review

The application is subject to Intergovernmental Review of Federal Programs governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. The applicant (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on the application submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., room 300, Mail Stop E–14, Atlanta, Georgia 30305. The due date for state process recommendations is 30 days after the application deadline date for this new award. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline Date

The Wheeling Hospital, Wheeling, West Virginia, must submit an original and two copies of the application PHS Form 5161–1 to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 282 and contact Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6508. Programmatic technical assistance may be obtained from John Livengood M.D., Division of Chronic Disease Control and Community Intervention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K–45, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–5532.

A copy of Health People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone: 202–783–3238).

Dated: September 2, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–21918 Filed 9–10–92; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Georgia State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 21, 1992, in room 743, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Georgia SPA 92–10.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Georgia State plan amendment (SPA) number 92–10.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will publish a separate notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Georgia SPA 92–10 contains a list of Medicaid obstetrical and pediatric (Ob/Ped) payment rates, data alleging at least 50 percent of obstetrical practitioners are full Medicaid participants, and data on the average statewide Medicaid payments for Ob/Ped services for the second previous year.

The issue here is whether Georgia SPA 92–10 meets the statutory provisions of section 1926(a)(2) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that, by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for Ob/Ped practitioner services. States also must provide specific information to document that those payment rates are

sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). Beginning in 1992, States must also submit data on the average statewide Medicaid payment for Ob/Ped services for the second previous year by procedure code and by practitioner. This data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

HCFA has determined, on the basis of the statute and Congressional intent, that for Ob/Ped rate SPAs to be approvable under section 1926 of the Act, they must include the following:

1. Payment rates for July 1, 1992 through June 30, 1993 for Ob/Ped services, specified by procedure;

2. Data that document that payment rates for Ob/Ped services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;

3. Data that document that payment rates to health maintenance organizations (HMO) under section 1903(m) of the Act take into account the payment rates specified in number 1 above; and,

4. Average statewide Medicaid payments for Ob/Ped services for the second previous year (the period July 1, 1990 through June 30, 1991 for SPAs due April 1, 1992) by procedure code in effect at the time and by practitioner. The data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act.

Based upon the data submitted, HCFA has determined that Georgia's amendment does not comply with the statutory requirements of section 1926 of the Act, and, thus also does not comply with section 1902(a)(30)(A) of the Act. Georgia argues that it meets the statute under a combination of HCFA's guidelines number 1 and number 2. Guideline 1 permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of Ob/Ped practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. Guideline 2 permits the State to document its compliance with the statute by submitting data showing that their fee-for-service payment rates for Ob/Ped services are at least 90 percent of the average allowance (weighted by frequency) of private insurers.

For obstetrical services, Georgia demonstrates under guideline 1 that at least 50 percent of obstetrical practitioners are participating in the Medicaid program. Georgia attempts to meet the statutory requirements for pediatric services utilizing guideline 2. Under this guideline, Georgia compared its 1992 Resource Based Relative Value Scale (RBRVS) rates for pediatric Management and Evaluation procedures to its 1991 reimbursement rates rather than a private insurer. Georgia found the 1992 rates to be 20 percent higher in the aggregate than the 1991 reimbursement rates. Georgia argues that for this reason its reimbursement for pediatric services is sufficient to provide access at least to the extent these services are available to the general population.

However, HCFA believes Georgia did not meet the criteria for guideline 2 for pediatric services because Georgia did not compare its fees to those of a private insurer.

Georgia indicates that because of the revision of CPT–IV procedure codes effective in 1992, it was unable to obtain current payment data for private insurers because fees have not been established for the new pediatric Management and Evaluation procedure codes. However, HCFA believes the guideline might have been met had the State crosswalked the 1992 RBRVS codes with the existing codes which could have then been compared with a private insurer's existing fee schedule.

HCFA disapproved Georgia SPA 92–10 because the data supplied by the State for pediatric services was insufficient to establish the State's compliance with the requirements of sections 1902(a)(30)(A) and 1926 of the Act.

The notice to Georgia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Russell B. Toal,
Commissioner,
Georgia Department of Medical Assistance,
1220–C West Tower,
2 Martin Luther King, Jr. Drive, SE.,
Atlanta, Georgia 30334–8500.

Dear Mr. Toal: I am responding to your request for reconsideration of the decision to disapprove Georgia State Plan Amendment (SPA) 92–10. Georgia submitted SPA 92–10 to establish compliance with section 1926 of the Social Security Act (the Act).

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that, by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical and pediatric (Ob/Ped) practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that Ob/Ped services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data on the average statewide Medicaid payment for Ob/Ped services for the second previous year by procedure code and by practitioner (beginning in 1992). The data must be provided separately for each metropolitan statistical area (or similar area) in the State and for the remainder of the State.

The issue in this matter is whether the plan amendment meets the statutory requirements of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on October 21, 1992, in room 743, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,
Acting Deputy Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

William Toby, Jr.,
Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–21569 Filed 9–10–92; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Cancer Institute; Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittee on September 21–22, 1992. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland

20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, room 10A06, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Name of Committee: National Cancer Advisory Board

Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03 Bethesda, MD 20892; (301) 496–5147

Dates of Meeting: September 21–22, 1992

Place of Meeting: Building 31C, Conference Room 10

Open: September 21—8 a.m. to approximately 3 p.m.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: September 21—3 p.m. to recess

Agenda: For review and discussion of individual grant applications.

Open: September 22—8:30 a.m. to adjournment

Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Information and Cancer Control for the Year 2000

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31 Bethesda, MD 20892; (301) 496–6631

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 4

Open: 7 a.m. to 8 a.m.

Agenda: To discuss the Office of the Director contract concept review.

Name of Committee: Subcommittee on Minority Health, Research and Training

Executive Secretary: Dr. Vincent Cairoli, Executive Plaza North, room 232, Bethesda, MD 20892; (301) 496–8580

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 4

Open: 1 p.m. to 2 p.m.

Agenda: To discuss the status of the various NCI minority research training programs and future strategies.

Name of Committee: Subcommittee on Planning and Budget

Executive Secretary: Ms. Cherie Nichols, Building 31, Room 11A19, Bethesda, MD 20892; (301) 496–5155

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 9

Open: 1 p.m. to 2 p.m.

Agenda: Discussion of current 1993 budget, strategic plan update, innovative research grant mechanism, and POI grant mechanism.

Name of Committee: Subcommittee on Aging and Cancer

Executive Secretary: Dr. Marvin Kalt, Building 31, room 10A03, Bethesda, MD 20892; (301) 496–4218

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 9

Open: 2 p.m. to 3 p.m.

Agenda: TBA

Name of Committee: Subcommittee on Women's Health and Cancer

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference Room 4

Open: 2 p.m. to 3 p.m.

Agenda: To discuss the role of a women's committee in a clinical cooperative group.

Name of Committee: AIDS Subcommittee

Executive Secretary: Dr. Judith Karp, Building 31, room 11A23, Bethesda, MD 20892; (301) 496–3505

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 4

Open: Immediately following the recess of the NCAB.

Agenda: TBA

Name of Committee: Subcommittee on Cancer Centers

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300 Bethesda, MD 20892; (301) 496–8537

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 9

Open: Immediately following the recess of the NCAB meeting.

Agenda: Update on Cancer Centers program.

Name of Committee: Subcommittee on Environmental Carcinogenesis

Executive Secretary: Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496–6618

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 9

Open: 6 p.m. to adjournment

Agenda: To discuss Heterocyclic Aromatic Amines occurring in cooked foods.

Name of Committee: Subcommittees on Interaction Voluntary Organizations

Executive Secretary: Mr Paul Van Nevel, Building 31, room 11A31, Bethesda, MD 20892; (301) 496–6618

Date of Meeting: September 21, 1992

Place of Meeting: Building 31C, Conference 4

Open: 6 p.m. to adjournment

Agenda: To discuss collaborative efforts between NCI and non-government health groups foods.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 3, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22060 Filed 9–10–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, August 21, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Application for Survivors Benefits—0960–0062. The information on form SSA–24 is used by the Social Security Administration (SSA) to determine if an individual who is filing for benefits from the Veterans Administration (VA) may also be entitled by SSA. The respondents are claimants for VA benefits.

Number of Respondents: 3,200
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 800 hours

2. Modified Benefit Formula Questionnaire—0960–0395. The information on form SSA–150 is used by the Social Security Administration to determine the correct formula to be used in computing Social Security benefits. The respondents are claimants for benefits who also receive a benefit form

employment not covered by Social Security.

Number of Respondents: 90,000
Frequency of Response: 1
Average Burden Per Response: 8 minutes
Estimated Annual Burden: 12,000 hours

3. Report of Continuing Disability Interview—0960–0072. The information on form SSA–454 is used by the Social Security Administration to record information provided by disability beneficiaries to determine whether or not they should continue receiving those benefits. The respondents are selected beneficiaries who receive a continuing disability review.

Number of Respondents: 300,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 150,000 hours

4. Statement by School Official About Student's Attendance and Statement to U.S. Social Security Administration by School Outside the U.S.—0960–0090. The information on forms SSA–1371 and SSA–1371–FC is used by the Social Security Administration to determine a student's alleged full-time attendance at an educational institution in cases where such attendance is needed for continued entitlement to benefits.

Number of Respondents: 5,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 833 hours

5. Report of Student Beneficiary About to Attain Age 19—0960–0274. The information on form SSA–1390 is used by the Social Security Administration to determine whether a student beneficiary is entitled to benefits for the month of attainment of age 19 and subsequent months.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 4,167 hours

6. Child Relationship Statement—0960–0116. The information on form SSA–2519 is used by the Social Security Administration to entitle children to benefits under the deemed relationships provision. The respondents are individuals who have knowledge of a child's relationship to the insured worker.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 12,500

7. Reconsideration Disability Report—0960–0144. The information on form SSA–3441 is used by the Social Security Administration to determine if a claimant's medical or vocational situation has changed since the initial SSA determination on his/her claim for disability benefits. The respondents are applicants for disability benefits who request reconsideration of the initial determination made regarding their claims.

Number of Respondents: 400,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 200,000

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 4, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–21840 Filed 9–10–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3498]

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: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20530.

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 submissions including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, 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: September 2, 1992.

David Cristy,

Acting Director, Information Resources, Policy and Management Division.

Proposal: Notice of Funding Availability for Planning Grants for Non-Profit Community Based Organizations and Resident Councils (FR–3288).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Application is necessary to identify organizations eligible to receive funds for capacity building, to facilitate non-profit or resident council purchases of projects eligible under title II or title VI as specified in the Act. The information in the application will be used by HUD to determine the eligibility of each applicant for grant funds and the acceptability of the proposed use of such funds.

Form number: None.

Respondents: Non-Profit Institutions.

Frequency of submission: One-time.

Reporting burden:

	Number of respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Applications	60		2		5		600

Total Estimated Burden Hours: 600.

Status: New.

Contact: Kevin J. East, HUD, (202) 708–2300. Angela Antonelli, OMB, (202) 395–6880.

Dated: September 2, 1992.

[FR Doc. 92–21981 Filed 9–10–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. 92–3499]

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: Angela Antonelli, 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, rein statement, 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: September 2, 1992.

David Cristy,

Acting Director, Information Resources Policy and Management Division.

Proposal: Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: The information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses located in the area of the assisted project.

Form Number: HUD–60002.

Respondents: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–60002	175,000		1		2.14		375,000

Total Estimated Burden Hours: 375,000.

Status: New.

Contact: Maxine B. Cunningham, HUD, (202) 708–2251. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 92–21982 Filed 9–10–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3500]

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: Angela Antonelli, 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: September 3, 1992.

David Cristy,

Acting Director, Information Resources, Policy and Management Division.

Proposal: Contract for Inspection Services-Turnkey.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This contract affects Public Housing Agencies (PHAs) and architects/engineers selected to inspect Turnkey projects. PHAs use this contract to establish legal obligations and conditions relating to services of the architect/engineer.

Form Number: HUD–5084.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5084	135		1		1.5		203
Recordkeeping	135		1		.38		51

Total Estimated Burden Hours: 254.

Status: Reinstatement.

Contact: John Comerford, HUD, (202) 708–1872. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 92–21983 Filed 9–10–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3501]

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: Angela Antonelli, 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, rein statement, 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: September 2, 1992.

John T. Murphy,

Director, Information Resources, Policy and Management Division.

Proposal: Section 8 Rental Voucher and Rental Certificate Utilization Study.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This information is needed in order to assist HUD and PHAs in improving success rates in the Section 8 Rental Voucher and Rental Certificate programs. The information will also serve as the basis for the Department's report to Congress and for recommendations on PHA administrative practices that could serve to increase Section 8 success rates.

Form Number: None.

Respondents: Individuals or Households and State or Local Governments.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	4,209		1.70		.47		3,352

Total Estimated Burden Hours: 3,352.
Status: New.
Contact: Garland E. Allan, HUD, (202) 708–3700. Angela Antonelli, OMB (202) 395–6880.

[FR Doc. 92–21984 Filed 9–10–92; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–95]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 693–0674; (This is not a toll-free number).

Dated: September 4, 1992.

Denise R. Alexander,

Deputy Assistant Secretary for Operations.

Title V, Federal Surplus Property Program Federal Register Report For 9/11/92

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1 story with 2 to 5 bedrooms
Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3-story structures including dorms and lodging
Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel; a gate house, a post office and an education center
Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreational centers, theater, commissary and stores
Property Numbers: 199210100–199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp
Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete

structures including a hospital, clinics and pharmacy
Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures
Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities
Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs
Property Number: 199210106
Type Facility: Base Support and Flight Maintenance Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops
Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures

Eaker Air Force Base is located in Blytheville, Arkansas 72317–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25–4 unit buildings with two story four bedroom units; four playgrounds
Property Number: 199210045
Type Facility: Office/administration—28 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction
Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block; masonry or metal/brick construction
Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.
Property Numbers: 199210056, 199210072
Type Facility: Warehouses/multi-use buildings—38; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities
Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.
Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction
Property Numbers: 199210063–199210065, 199210073
Type Facility: Stores and services—4 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store; 38,575 sq. ft., one story concrete block/metal commissary
Property Number: 199210066
Type Facility: Airfield related buildings—13; 96 to 49,000 sq. ft.; shingle, metal or concrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers
Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings
Property Number: 199210069
Type Facility: Fuels/related storage facilities—37 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage
Property Number: 199210070
Type Facility: Hazardous storage buildings—5; 96 to 3,000 sq. ft.; one story metal structures
Property Number: 199210071
Type Facility: Munitions facilities—11 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines
Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame
Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer
Property Numbers: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio-visual photo lab
Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions
Property Number: 199210079
Type Facility: Land; 1,962 acres; restrictive agricultural lease

Unsuitable Properties:

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures
Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies

California—George Air Force Base

George Air Force Base is located in San Bernardino, California, 92394–5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures. The Air Force has determined that all suitable properties are available for use to assist the homeless.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 269–2020.

Suitable/Available Properties

Properties Numbers: 199120001–199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos
Property Numbers: 199120421–199120473

Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos
Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos
Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos
Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos
Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos
Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos
Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos
Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos
Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos
Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos
Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos
Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos
Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos
Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive materials
Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive materials

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Properties Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos
Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos
Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos
Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos
Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos
Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos
Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos
Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos
Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos
Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos
Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos
Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos
Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos
Property Number: 199210033

Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos
Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos
Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure
Property Number: 199210036
Type Facility: Fuel Facilities—8 buildings; one story structures
Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures
Property Number: 199210038
Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures
Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres)

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 463 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210139
Type Facility: Housing—463 houses with 1 to 8 units, brick and wood structure, possible asbestos
Property Number: 199210140
Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos
Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos
Property Number: 199210142
Type Facility: Storage/Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs
Property Number: 199210143
Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos
Property Number: 199210144
Type Facility: Engine Test Cells/Warehouse—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos
Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations
Property Number: 199210146
Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos
Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch exchanges and 1 commissary, possible asbestos
Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos
Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos
Property Number: 199210150
Type Facility: Recreation—48 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range
Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos
Property Number: 199210153
Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/wood band center, needs rehab

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,282 acres and contains 294 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/Available Properties

Property Numbers: 199210080–199210081
Type Facility: Housing—294 buildings with 598 dwelling units; one and two story; wood or masonry frames; 1,190 to 5,701 sq. ft.
Property Number: 199210082
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame; presence of asbestos in several structures
Property Numbers: 199210083–199210084
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, theatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures
Property Number: 199210085
Type Facility: Dorms and dining areas—14 buildings; 3,902 to 24,715 sq. ft.; brick or masonry frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall
Property Number: 199210086
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structures; includes classrooms, child care center, school, education office and field training facility
Property Number: 199210087
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital
Property Number: 199210088
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mail, photo lab, post office, service station and base package store
Property Number: 199210089
Type Facility: Storage/Warehouses—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to

60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures
Property Number: 199210090
Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures
Property Number: 199210091
Type Facility: Airfield related facilities—36 buildings including vehicle fuel station, petroleum operations builidng, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures
Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos
Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base. All suitable/available properties listed below are vacant.

Suitable/Available Properties

Property Number: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall
Property Number: 189040326
Type Facility: 1 bachelor quarters buildings
Property Number: 189040327
Type Facility: Hospital heat plant
Property Number: 189040328
Type Facility: Hospital
Property Number: 189040329
Type Facility: Trailer (hospital office space)
Property Number: 189040330–198040322
Type Facility: 3 training facilities
Property Number: 189040333–198040334
Type Facility: 2 child care facilities
Property Number: 189040335
Type Facility: Fire station
Property Number: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences
Property Number: 189040352
Type Facility: 1 chapel
Property Number: 189040383
Type Facility: Single family residence
Property Number: 189040384
Type Facility: Rod and gun club
Property Number: 189040387–189040394
Type Facility: 8 dormitories
Property Number: 189040395–189040404
Type Facility: 10 residences with detached garage
Property Number: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage
Property Number: 189040468–189040471
Type Facility: 4 6-unit residences with attached garage
Property Number: 189040472–189040561
Type Facility: 90 detached housing storage sheds
Property Number: 189040726
Type Facility: 1 communications facility
Property Number: 189040737–189040740, 189040742
Type Facility: 5 recreational facilities
Property Number: 189040743–189040751
Type Facility: 9 small concrete munitions storage buildings
Property Number: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities
Property Number: 189040774–189040775, 189040777–189040778, 189040787, 189040790, 189040792–189040793, 189040795–189040805
Type Facility: 19 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course
Reason: Within airport runway clear zone
Property Number: 189010536
Type Facility: Vehicle fuel station
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses
Reason: Within 2000 ft. of flammable or explosive material
Property Number: 189010539
Type Facility: Weapons storage area
Reason: Within 2000 ft. of flammable or explosive material
Property Numbers: 189040354–189040359
Type Facility: Bldgs. 399–401, 403, 405, 407
Reason: Within airport runway clear zone
Property Numbers: 189040361, 189040369, 189040373
Type Facility: Industrial facilities
Reason: Within 2000 ft. of flammable or explosive material
Property Number: 189040717
Type Facility: Utility plant
Reason: Other
Property Numbers: 189040772, 189040794
Type Facility: Bus shelters
Reason: Other
Property Numbers: 189040806, 189040825–189040829
Type Facility: Sewage pump stations
Reason: Other
Property Numbers: 189040820, 189040822–189040824
Type Facility: Pump stations
Reason: Other
Property Numbers: 189040830–189040851
Type Facility: Power stations
Reason: Other

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties will be excess to the needs of the Air Force on or about March 31, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two three, and four bedrooms single family dwellings and duplexes with attached carports
Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures
Property Number: 199210003
Type Facility: Miscellaneous—14 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall
Property Number: 199210004
Type Facility: Hospital—1 three story base hospital and 6 one story medical support buildings
Property Number: 199210005
Type Facility: Office/Administration—53 buildings; one to two story

modular, block, wood and brick structures
Property Numbers: 199210006–199210008
Type Facility: Recreation—15 buildings and land including bath houses, bowling center, gymnasium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground, golf course and driving range
Property Number: 199210009
Type Facility: Utility Type Facilities—45 buildings; one story structures including warehouses, shops and sheds
Property Number: 199210010
Type Facility: Security—3 police buildings; one story masonry structures including a jail
Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures
Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest

Suitable/Unavailable Properties

Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—25 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building
Reason: Extensive Deterioration

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210108–199210122
Type Facility: Housing—352 military family residences; 1 and 2-story wood frame, concrete and brick/wood buildings
Property Number: 199210123
Type Facility: Dormitories—7 buildings; 3 and 4-story concrete block dorms
Property Number: 199210124
Type Facility: Temporary Living Quarters—6 buildings; 1 and 2-story brick and frame lodging facilities
Property Number: 199210125
Type Facility: Administration Facilities—45 buildings; 1 to 4-story concrete block, brick, metal and wood structures including education centers, child care, clinics and admin. bldgs.
Property Number: 199210126
Type Facility: Recreation Facilities—13 buildings; metal, concrete block, brick and wood structures including golf club equip. houses, bathhouse, gym, bowling, youth and recreation centers and NCO clubs
Property Number: 199210127
Type Facility: Recreation Areas—14 areas; approximately 172 acres including golf course, riding stables, playground and picnic area, camps and tennis courts
Property Numbers: 199210128–199210130
Type Facility: Miscellaneous Facilities—80 buildings; 1-story metal, concrete, block, wood, and brick structures including maintenance and storage bldgs., shops, warehouses, sheds and a commissary
Property Number: 199210131
Type Facility: Facility 1506—24,000 sq. ft., 1-story brick dining hall
Property Number: 199210132
Type Facility: Facility 3000—345,186 sq. ft., 5-story concrete hospital
Property Number: 199210133
Type Facility: Bank/Credit Union—2 buildings; a 1-story concrete bank and a 2-story brick credit union
Property Number: 199210134
Type Facility: Facility 1838—8790 sq. ft., 1-story brick chapel
Property Number: 199210135
Type Facility: Facility 1845—9967 sq. ft., 1-story brick theater
Property Number: 199210136
Type Facility: Fuel Stations—2 buildings; 1-story metal and brick/metal vehicle fuel and exchange service stations
Property Number: 199210137
Type Facility: Hazardous Storage and Igloos—40 buildings; 4 metal and concrete block hazardous storage bldgs. and 36 concrete igloo storage bldgs.
Property Number: 199210138
Type Facility: Airport Related Areas—26 areas; approximately 205 acres including runways, aprons, taxiways and pads

Suitable/Unavailable Properties

Property Number: 189120235
Type Facility: #237

Unsuitable Properties

Property Numbers: 189030043–189030218
Type Facility: Kings Branch Housing
Reason: Extensive deterioration

Maine—Loring Air Force Base

Suitable/Available Properties

Buildings

Bldgs. 1—16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Aroostook, Zip: 04750—
Federal Register Notice Date: 01/31/92
Property Numbers: 189010590–189010605
Status: Excess
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair

Colorado—Lowry Air Force Base

Suitable/Available Properties

Land

NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Denver, Zip: 80230–5000
Federal Register Notice Date: 01/31/92
Property Number: 189010254
Status: Excess
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary
Comment: Approximately 20 acres; sloping parts in the area

[FR Doc. 92–21839 Filed 9–10–92; 8:45 am]
BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3286; FR–3063–N–02]

NOFA for the Public Housing Family Self-Sufficiency Program for Fiscal Year 1991; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the Public Housing Family Self-Sufficiency Program for Fiscal Year 1991. The announcement contains the

names and addresses of the award winners and the amounts of the awards.

DATES: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Further information on these awards is available from the Regional Offices indicated, or from the public housing agencies listed in this announcement. The telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: On September 30, 1991 (56 FR 49604), the Department published a Notice of Fund Availability (NOFA) advising public housing agencies (PHAs) that $66.8 million in grant appropriations were available for the purpose of developing public housing units as incentive awards in exchange for PHA initiation of a Family Self-Sufficiency (FSS) Program, as provided under the provisions of section 23 of the U.S. Housing Act of 1937, 42 U.S.C. 1437u (section 23 was added by section 554 of the National Affordable Housing Act (NAHA)). The Public Housing FSS NOFA, published on September 30, 1991, set forth the application procedures and described the method that the Department would use to rate and rank approvable applications.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the following lists (by HUD Region) the names and addresses of the PHAs that were awarded incentive development grants under the Public Housing FSS NOFA, and the amounts of the grants.

PUBLIC HOUSING DEVELOPMENT FAMILY SELF-SUFFICIENCY INCENTIVE FUND AWARDS

Region and PHA name	Amount
I—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Bldg., Room 375, Boston, MA 02222-1092, (617) 565-5234:	
Cambridge Housing Authority, 270 Green St, Cambridge, MA	746,800
Gloucester Housing Authority, PO Box 1599, Gloucester, MA	882,900
Hartford Housing Authority, 475 Flatbush Avenue, Hartford, CT	987,350
Portland Housing Authority, 211 Cumberland Ave., Portland, ME	1,049,650
Westerly Housing Authority, 5 Chestnut Street, Westlery, RI	668,600
Woburn Housing Authority, 59 Campbell Street, Woburn, MA	734,400
II—New York Regional Office, 26 Federal Plaza, New York, NY 10278-0068, (212) 264-6500:	
Islip Housing Authority, 963 Montauk Highway, Oakdale, NY	3,046,200
New York City Hsg Auth, 250 Broadway, New York City, NY	3,723,600
Schenectady Housing Authority, 375 Broadway, Schenectady, NY	5,386,500
III—Philadelphia Regional Office, Liberty Square Bldg, 105 S. 7th Street, Philadelphia, PA 19106-3392, (215) 597-2560:	
Housing Opportunities Comm, 10400 Detrick Avenue, Kensington, MD	2,921,600
Norfolk Housing Authority, PO Box 968, Norfolk, VA	1,578,000
Petersburg Housing Authority, 128 S Sycamore Street, Petersburg, VA	1,663,200
IV—Atlanta Regional Office, Richard B. Russell Federal Bldg, 75 Spring Street SW., Atlanta, GA 30303-3388, (404) 331-5136:	
High Point Housing Authority, 500 E Russell Avenue, PO Box 1779, High Point, NC	1,504,050
Jackson Housing Authority, 3430 Albermarle Road, Jackson, MS	1,445,300
Jefferson County Housing Authority, 2100 Walker Chapel Road, Fultondale, AL	1,171,200
Kingsport Housing Authority, PO Box 44, Kingsport, TN	946,800
Mobile Housing Authority, PO Box 1345, Mobile, AL	1,057,800
Raleigh Housing Authority, PO Box 28007, Raleigh, NC	1,880,000
Tampa Housing Authority, PO Box 4766, Tampa, FL	1,212,450
V—Chicago Regional Office, Ralph H. Metcalf Federal Building, 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 353-5680:	
Champaign County Housing Authority, PO Box 183, Urbana, IL	803,000
Duluth Hsg & Redevel Authority, 222 E 2nd Avenue, Duluth, MN	706,000
LaSalle County Housing Authority, PO Box 782, Ottawa, IL	1,563,300
Rochester Hsg & Redevel Authority, 2116 Campus Drive SE, Rochester, MN	859,500
Rockford Housing Authority, 330 15th Avenue, Rockford, IL	1,604,500
S.E. Minn. Multi-County Hsg Authority, Wabasha, MN	1,289,250
Warren County Housing Authority, 990 E Ridge Drive, Box 63, Lebenon, OH	1,748,200
Youngstown Metro Housing Authority, 131 W Boardman, Youngstown, OH	1,544,400
VI—Ft. Worth Regional Office, 1600 Throckmorton, PO Box 2905, Ft. Worth, TX 76113-2905, (817) 885-5401:	
Anthony Housing Authority, Drawer 1740, Anthony, TX	1,671,750
Dallas Housing Authority, 2525 Lucas Drive, Dallas, TX	802,500
Harlingen Housing Authority, PO Box 1669, Harlingen, TX	935,000
Pharr Housing Authority, 211 W Audrey, Pharr, TX	865,700
San Antonio Housing Authority, 818 S Flores, San Antonio, TX	1,001,000
VII—Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101-2406, (913) 236-2162:	
Eastern Iowa Regional Hsg Authority, Suite 330, Nesler Center, Dubuque, IA	413,900
Kearney Housing Authority, 2715 Avenue I, Kearney, NE	616,850
Lincoln Housing Authority, 5700 R Street, Lincoln, NE	627,350
Waterloo Housing Authority, 215 E 4th Street, Waterloo, IA	741,200
VIII—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202-2349, (303) 844-4513:	
Billings Housing Authority, 2415 First Avenue, North, Billings, MT	421,600
Missoula Housing Authority, 1319 E Broadway, Missoula, MT	390,250
Pueblo Housing Authority, 1414 N Santa Fe, Pueblo, CO	397,500
Salt Lake City Housing Authority, 1600 SW Temple, Salt Lake City, UT	447,600
IX—San Francisco Regional Office, Philip Burton Federal Office Building and U.S. Courthouse, 450 Golden Gate Avenue, PO Box 36003, San Francisco, CA 94102-3448, (415) 556-4752:	
LA City Housing Authority, 515 Columbia Avenue, Los Angeles, CA	2,479,800
Las Vegas Housing Authority, PO Box 1897, Las Vegas, NV	2,448,900
Nogales Housing Authority, PO Box 777, Nogales, AZ	2,722,700
Phoenix Neighborhood Improv & Hsg Dept, 830 E. Jefferson, Phoenix, AZ	1,953,700
Yuma County Housing Department, 8450 W Highway 95, #88, Somerton, AZ	2,753,750
X—Seattle Regional Office, Arcade Plaza Bldg, 1321 Second Avenue, Seattle, WA 98101-2058, (206) 553-5414:	
Bellingham Housing Authority, 208 Unity, Bellingham, WA	439,350
Everett Housing Authority, 1401 Poplar, Everett, WA	370,050
Lincoln County Housing Authority, PO Box 1470, Newport, OR	616,200
Tacoma Housing Authority, 1728 E 44th Street, Tacoma, WA	554,900

PUBLIC HOUSING DEVELOPMENT FAMILY SELF-SUFFICIENCY INCENTIVE FUND AWARDS—Continued

Region and PHA name	Amount
Vancouver Housing Authority, 500 Omaha Way, Vancouver, WA	426,500

Dated: September 4, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–21838 Filed 9–10–92; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–92–4120–20]

Casper District Advisory Council; Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice availability of midterm appointment to Casper District Advisory Council.

SUMMARY: The three year term ending December 31, 1994 representing the non-renewable category on the Casper District Advisory Council has been vacated. Nominations for appointment can be sent to Casper District Manager. Nominations should include the name, address, telephone numbers, biological sketch outlining the qualifications for serving as an advisor to the District Manager on the Category of interest indicated.

ADDRESSES: Send nominations to Casper District Manager, Bureau of Land Management Casper District Office, 1701 East E Street, Casper, WY 82601.

FOR FURTHER INFORMATION CONTACT: Casper District Manager, Mike Karbs, (307)–261–7600.

Mike Karbs,

District Manager.

[FR Doc. 92–21922 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–22–M

[CA–060–5440–10 ZBAF]

Intent to Prepare Supplemental Environmental Impact Statement on Direct Sale of Land to State of California, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will prepare a supplement to the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) State of California Indemnity Selection & Low-Level Radioactive Waste Facility (April 1991). The final EIR/EIS analyzed the environmental impact of a proposed State of California indemnity selection that upon conveyance and the issuance of all applicable licenses and permits would be utilized as a low-level radioactive waste (LLRW) facility, located in Ward Valley, approximately 23 miles west of the City of Needles and one mile south of Interstate 40. The State recently filed an application (CA 30582) for a proposed conveyance though a direct sale process rather than the proposed conveyance through the indemnity selection process. The 1000 acres and the legal description of public land remains the same as in the final EIR/EIS; only the mode of proposed conveyance differs. The proposed future use of the subject land has not changed from that use analyzed in the final EIR/EIS. The supplemental EIS will analyze the change in the means of the proposed disposal and conveyance of public land from indemnity selection to direct sale. The supplement will not address technical, scientific or health issues. Those issues were addressed in the final EIR/EIS and the proposed future use of the subject land has not changed. Further, the State may conduct further hearings involving these issues as part of their licensing process.

DATES: Written comments will be accepted if received by October 10, 1992.

ADDRESSES: Please send your written comments to: California Desert District, Attn. Ward Valley, 6221 Box Springs Blvd., Riverside, California 92507.

Dated: August 28, 1992.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 92–21302 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–40–M

[NM–010–4320–02; G–910–G2–0089]

Albuquerque District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Grazing Advisory Board Meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on October 15, 1992, at 10 a.m. in the BLM District Office located at 435 Montano NE, Albuquerque, New Mexico.

The meeting agenda will include the following:

- Introduction and Opening Remarks
- Animal Damage Control Update
- Range Improvement Progress Report FY 92
- Range Improvement Progress Report and Final Ranking for FY 93
- Public comment period at 1 p.m.

The meeting is open to the public. Anyone interested in attending this meeting to make a presentation must notify the District Manager by October 10, 1992. Written statements may also be filed for the Board's consideration.

Dated: September 4, 1992.

Robert T. Dale,

District Manager.

[FR Doc. 92–21955 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–FB–M

[WY–060–92–4111–20]

Meetings; Casper District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Casper District Advisory Council.

SUMMARY: The Casper District Advisory Council will meet September 14 and September 15, 1992, for two separate tours and a business meeting. On September 14, the council will tour the Thunder Basin Coal Mine, Gillette, Wyoming, beginning about 9:30 a.m. and will meet for their business meeting at 2 p.m. at the Bureau of Land Management Newcastle Resource Area office, 1101 Washington Blvd., Newcastle,

Wyoming. The Public comment period is scheduled for 3 p.m. during that meeting. The council will reconvene 8 a.m., September 15, at the Newcastle Resource Area office for a tour of Whoop-up Canyon. The Bureau of Land Management manages the coal resources at West Black Thunder and administers the lands referred to as Whoo-up Canyon. The agenda items for September 14, 1992, business session are as follows: (1) State Director's Vision on Visitor & Interpretive Centers and potential funding of the same, (2) Status reports on wilderness designation, (3) Coal leasing, (4) Casper District road condition report, and any other issues brought forth by the public and/or council members.

FOR FURTHER INFORMATION CONTACT: Kate Padilla, Public Affairs, Specialist, 307–261–7600, Casper District.

Dated: August 24, 1992.

William H. Mortimer,

Associate District Manager.

[FR Doc. 92–21925 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–22–M

[CA–060–02–4333–10]

Route Designation Update, California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of intent to update route designations in portions of the California Desert District (CDD) of the Bureau of Land Management (BLM) and to extend the deadline for submission of public comments.

SUMMARY: On July 9, 1992, the BLM published a notice initiating an update of route designations in portions of the California Desert District and requesting public comments and recommendations on the inventory of routes to be considered for designation as "open", "limited", or "closed" to motorized vehicle use. The purpose of this amendment is to enlarge the area covered by the update and to extend the public comment period to December 11, 1992.

In addition to the areas listed in the July 9, 1992, **Federal Register** notice, the update will cover all or portions of the following Desert Access Guides (DAGs) which are located within the planning area for the West Mojave Coordinated Management Plan (CMP) being prepared cooperatively by the BLM, the California Department of Fish and Game, and the United States Fish and Wildlife Service: Panamint DAG, Jawbone/Dove Springs DAG (area within CDD boundaries), Dumont/Clark Mountain DAG (area within West Mojave CMP boundaries), Irwin DAG, Providence Mountains DAG (area within West Mojave CMP boundaries), and Sheephole Mountains DAG (area within West Mojave CMP boundaries).

Some, though not all, existing and previously designated routes are shown on the above-referenced Desert Access Guides published by the Bureau of Land Management. Copies of the Desert Access Guides can be purchased from any of the BLM offices listed in this notice for $4.00 per DAG.

Additional routes that have been identified by the BLM to be considered as part of the inventory base are not shown on the published DAGs; however, they are available for review on 7.5′ and 15′ USGS quad maps maintained in the resource area office responsible for managing the affected public lands. To view inventory and route data maintained by the BLM, please call the individuals listed below to arrange a convenient time to view such materials.

Members of the public are encouraged to review the DAGs and information on previously designated routes and provide written comments to the appropriate BLM office by December 11, 1992. Comments should identify additional routes to be added to the inventory of routes considered for designation, and make recommendations on specific routes that should be "open", "limited", or "closed" to motorized vehicle use. Recommendations for additional routes and for limiting or closing all or segments of existing routes should include rationale to support the recommendation. A "limited" route is one which is limited with respect to the number of vehicles allowed, the types of vehicles allowed, the time or season of vehicle use, permitted or licensed vehicle use only, or establishment of speed limits.

A change in the status of routes which have been previously designated as "open", "closed", or "limited" will be considered only on the basis of new information, data or changed circumstances which were not addressed when the route was designated.

Following the public review period, the BLM will identify the inventory of routes to be considered in the designation process incorporating the results of public comments as well as the BLM inventory efforts.

DATES: Written public comments should be submitted to the Resource Area Manager responsible for the affected public lands and postmarked no later than December 11, 1992.

ADDRESSES: Comments should be sent to the following locations:

Comments concerning	Mail to	BLM contact
Ridgecrest DAG, Red Mountain DAG, Jawbone/Dove Sprgs DAG, Panamint DAG, Dumont/Clark Mtn DAG.	Area Manager, Ridgecrest RA, Attn: Route Update, 300 So. Richmond Rd., Ridgecrest, CA 93555.	Margaret Phillips (619)–375–7125.
Stoddard Valley DAG, Johnson Valley DAG, Yucca Valley DAG, Irwin DAG, Sheephole DAG.	Area Manager, Barstow RA, Attn: Route Update, 150 Coolwater Lane, Barstow, CA 92311.	Harold Johnson (619) 256–2729.
New York Mtns. DAG, Providence DAG	Area Manager, Needles RA, Attn: Route Update, P.O. Box 888, Needles, CA 92363.	Jim Foote (619)–326–3896.
Palm Springs DAG, Chuckwalla DAG	Area Manager, Palm Springs/South Coast RA, Attn: Route Update, P.O. Box 2000, North Palm Springs, CA 92258–2000.	JoAnn Schiffer (619) 251–0812.
Imperial Valley South DAG, Salton Sea DAG, McCain Valley DAG.	Area Manager, El Centro RA, Attn: Route Update, 1661 South 4th Street, El Centro, CA 92243.	Arnold Schoeck (619) 353–1060.
Desertwide Issues or Process Comments	District Manager, California Desert District, Attn: Route Update, 6221 Box Springs Blvd., Riverside, CA 92507–0714.	Molly Brady (714) 697–5230.

FOR FURTHER INFORMATION CONTACT: Molly Brady, California Desert District, 6221 Box Springs, Blvd., Riverside, CA 92507–0714, Telephone (714) 697–5230.

SUPPLEMENTARY INFORMATION: The decision to extend the time for submission of comments on the route designation update was the result of concerns expressed by members of the public at public meetings held in early August. An additional 60 days were added to the comment period to allow sufficient time for members of the public to provide meaningful comments.

The area to be covered by this first round of route designation updates has been expanded to incorporate all of the routes within the planning area for the West Mojave Coordinated Management Plan (WMCMP). This plan is being prepared to address management and land use issues relative to the desert tortoise which has been federally-listed as threatened under the Endangered Species Act of 1973 and the Mohave ground squirrel which has been state-listed as threatened under the California Endangered Species Act. In a meeting with the WMCMP planning team leader and representatives of the U.S. Fish and Wildlife Service and the California Department of Fish and Game on August 4, 1992, the BLM agreed that all route designation updates on public lands administered by the BLM within the planning area for the West Mojave CMP would be accomplished as part of the planning effort. Given the target dates for completing the draft West Mojave Coordinated Management Plan, it was determined that the BLM should request public comments for the additional area as soon as possible so members of the public have adequate time to review the existing inventory and submit comments.

Jean Rivers-Council,

District Manager.

[FR Doc. 92-21942 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-40-M

[MT-920-02-4111-14; MTM 80060; MT-920-02-4111-11; MTM 80071 & MTM 80076]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas leases MTM 80060, MTM 80071 and MTM 80076 all in Valley County, Montana, was timely filed and accompanied by the required rentals accruing from the date of termination.

No valid leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre for oil and gas leases MTM 80071 and MTM 80076, $10 per acre for oil and gas lease MTM 80060, and 16⅔ percent respectively. Payment of a $500 administration fee for each lease has been made.

Having met all the requirements for reinstatement of the leases as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Lands Management is proposing to reinstate the leases, effective as of the date of termination, subject to the original terms and conditions of the leases, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: September 3, 1992.

Karen L. Skauge,

Chief Fluids Adjudication Unit.

[FR Doc. 92-21944 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-92-4212-13; N-54527]

Opening Order, Public Lands; Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Opening order.

SUMMARY: This action provides for the opening of 5,908.36 public land acres previously segregated by a Notice of Realty Action for the Marys River reverse land exchange proposal, as published in the **Federal Register** on May 11, 1992, (57 FR 20127). That notice segregated 47,149.50 acres of public land in Elko and Eureka Counties. An exchange of a portion of the Federal lands was completed on August 20, 1992. The lands described below are no longer being considered in the subject exchange proposal and may now be opened to the public land laws, including the mining laws. The lands have been and remain open to the mineral leasing laws.

EFFECTIVE DATE: At 10 a.m. upon the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, 850 Harvard Way, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2091.2-2(a)(2), the segregative effect of the Notice of Realty Action is hereby terminated as to the following described lands and they are opened to entry as provided herein:

Mount Diablo Meridian, Nevada

T. 45 N., R. 51 E.,
Sec. 5, E½SE¼, E½NW¼SE¼;
Sec. 7, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 8, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 16, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 17, E½E½, N½NW¼, SW¼NW¼, E½NW¼SE¼;
Sec. 18, E½NE¼.

T. 40 N., R. 52 E.,
Sec. 14, SW¼, W½SE¼;
Sec. 15, E½E½SE¼, E½W½E½SE¼;
Sec. 22, E½E½;
Sec. 23, W½E½, W½;
Sec. 26, N½NW¼NE¼, N½NE¼NW¼, NW¼NW¼;
Sec. 27, NE¼NE¼, E½E½NW¼NE¼;
Sec. 33, W½NW¼SE¼, SE½NW¼SE¼, W½W½SE¼SE¼.

T. 33 N., R. 54 E.,
Sec. 2, S½SE¼.

T. 30 N., R. 55 E.,
Sec. 12, NE¼NE¼NE¼.

T. 39 N., R. 55 E.,
Sec. 13, SW¼NW¼SW¼, NW¼SW¼SW¼;
Sec. 23 NE¼SE¼SE¼NE¼, SW¼SW¼SE¼SE¼;
Sec. 24, W½NW¼SW¼NW¼, NW¼SW¼SW¼NW¼;
Sec. 26, W½NE¼NE¼, E½NE¼NW¼NE¼, S½SW¼NW¼NE¼, SE¼NW¼NE¼,N½SW¼NE¼, NW¼SE¼NE¼, S½SW¼NW¼, NE¼SE¼NW¼, S½NW¼SE¼NW¼, S½SE¼NW¼, N½NW¼NE¼SW¼, N½N½NW¼SW¼.

T. 40 N., R. 55 E.,
Sec. 36, lots 5, 7, E½NW¼NE¼, E½W½NW¼NE¼, NE¼NW¼SW¼NE¼, N½NE¼SW¼NE¼, SE¼NE¼SW¼NE¼.

T. 30 N., R. 56 E.,
Sec. 6, lot 7, N½NE¼SE¼SW¼;
NE¼SW¼SW¼SE¼;
Sec. 7, NE¼SW¼NE¼NE¼, NE¼NE¼SE¼NE¼;
Sec. 8, N½N½NW¼SE¼;
Sec. 9, N½N½NE¼SW¼, NE¼SW¼NE¼SE¼.

T. 32 N., R. 56 E.,
Sec. 28, E½SE¼;
Sec. 33, all;
Sec. 34, N½N½, SW¼NW¼, W½SE¼NW¼, W½E½SW¼, W½SW¼.

T. 33 N., R. 56 E.
Sec. 36, SE¼SW¼, W½W½SE¼SW¼.

T. 35 N., R. 56 E.
Sec. 20, NE¼NW¼.

T. 38 N., R. 56 E.,
Sec. 6, lots 1 & 2;
Sec. 18, Lot 4.

T. 39 N., R. 56 E.,
Sec. 6, NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, N½SE¼SE¼SE¼;
Sec. 31, S½NE¼SE¼, E½SE¼NW¼SE¼, SE¼SE¼.

T. 33 N., R. 61 E.,
Sec. 12, S½NE¼.

T. 33 N., R. 62 E.,
Sec. 7, lots 5, 8, NW¼NE¼, E½NE¼NE¼NW¼, NE¼SE¼NE¼NW¼;
Sec. 8, E½SE¼, SW¼SE¼, SE¼SW¼;
Sec. 17, NE¼, N½NW¼, N½SE¼NW¼.

T. 37 N., R. 62 E.,
Sec. 3, lots 3-8, 15, 16.

T. 38 N., R. 62 E.,
Sec. 30, lot 4, SE¼SW¼;
Sec. 31, N½NE¼NE¼NE¼, SE¼NE¼NE¼NE¼, NE¼NW¼NE¼NE¼;
Sec. 32, W½NW¼NW¼NW¼, NW¼SW¼NW¼NW¼.

T. 39 N., R. 63 E.,
Sec. 2, lot 4, SW¼NW¼;
Sec. 10, SE¼NE¼, S½;
Sec. 14, W½W½W½.

T. 43 N., R. 63 E.,
Sec. 10, E½NW¼NE¼, E½W½NW¼NE¼.

T. 44 N., R. 63 E.,
Sec. 8, NE¼SE¼;
Sec. 16, NW¼NE¼, E½SW¼NE¼;
Sec. 22, N½SW¼SW¼SW¼;

Sec. 28, E½NW¼NE¼, SW¼NW¼NE¼;
Sec. 33, E½SE¼NE¼;
Sec. 34, NW¼SE¼SW¼.
The area contains 5,908.36 acres in Elko County.

At 10 a.m. on the date of publication of this Notice in the **Federal Register**, the lands described above will be open to the operation of the public lands laws and to the operation of the mining laws, subject to valid existing rights. All valid applications received prior to or at 10 a.m. will be considered simultaneously filed. All other applications received will be considered in the order of filing. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 30, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts. The land remains open to mineral leasing.

Billy R. Templeton,

State Director.

[FR Doc. 92–21967 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–HC–M

[OR–943–4212–13; GP2–426; OR–41809]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public lands out of Federal ownership. This action will also open 160 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: October 17, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 80 acres in Jackson County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 35 S., R. 2 E.,
Sec. 30, SW¼NE¼, SE¼SW¼, and W½SE¼.
The area described contains 160 acres in Jackson County.

At 8:30 a.m., on October 17, 1992, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 17, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m. on October 17, 1992, the land will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 17, 1992, the land will be opened to applications and offers under the mineral leasing laws.

Dated: September 2, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–21920 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4212–13; GP2–425; OR–44409]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 1,320 acres of public land out of Federal ownership. This action will also open 460 acres of reconveyed lands to surface entry, and 300 acres to mining and mineral leasing. The minerals in the 160–acre balance are not in Federal ownership.

EFFECTIVE DATE: October 17, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 1,320 acres in Harney County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 39 S., R. 37 E.,

Sec. 14, N½NW¼NE¼;
Sec. 16, N½N½;
Sec. 35, NE¼NW¼;
Sec. 36, NW¼NW¼, S½NW¼, NE¼SW¼, and W½SE¼.
The areas described aggregate 460 acres in Harney County.

3. The minerals in the N½N½ of Sec. 16, T. 39. S., R. 37 E., W.M., are not in Federal ownership and will not be open to mining and mineral leasing.

4. At 8:30 a.m., on October 17, 1992, the lands described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 17, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on October 17, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on October 17, 1992, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: September 2, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–21921 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4212–13; GP2–427; OR–40882]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 120 acres of public lands out of Federal ownership. This action will also open 160 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: October 17, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 43 U.S.C. 1716, a patent has been issued transferring 120 acres in Josephine County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 35 S., R. 1 E.,
Sec. 15, N½SE¼ and SW¼SE¼.

Revested Oregon and California Railroad Grant Land

T. 35 S., R. 1 E.,
Sec. 15, SE¼SE¼.

The area described contains 160 acres in Jackson County.

At 8:30 a.m., on October 17, 1992, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 17, 1992, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 17, 1992, the land will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 17, 1992, the land will be opened to applications and offers under the mineral leasing laws.

Dated: September 2, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–21934 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–33–M

[FWS 93520–3210]

Realty Action To Segregate Public Lands in Kootenai, Benewah, Shoshone, Latah, Clearwater, and Idaho Counties, ID; Correction

In notice document 92–16988 beginning on page 32025 in the issue of Monday, July 20, 1992, make the following corrections:

1. On page 32025, in the third column, under T.40N., R.1E., add "Sec. 13, SW¼SW¼, excepting therefrom lot 1".

2. On the same page, in the third column, under T.40N., R.1e., "Sec. 14, S½NE¼, N½SE¼, and SW¼SE¼, excepting therefrom the interest of approved Mineral Survey 2806" should read "Sec. 14, S½NE¼, portion of SW¼ located in mining claims known as Rebel 15, 16, and 17 (formally known as Ruby Lode, Golden Wedge, and Golden Chest), and the SE¼ excepting therefrom lots 1 and 2".

3. On the same page, in the third column, under T.40N., R.1E., add "Sec. 23, N½NE¼, excepting therefrom lots 1 and 2".

4. On page 32026, in the first column, on line 21, "T.29N., R.2E. "should read "T.39N., R.2E.".

5. On the same page, in the first column, on line 26, "Sec. 4, NE¼SE¼", should read "Sec. 4, NW¼SE¼".

6. On the same page, in the first column, on line 42, "Sec. 32, W½NE¼" should read "Sec. 32, W½NW¼".

7. On the same page, in the first column, on line 66, "Sec. 12, SE¼SW¼" should read "Sec. 12, SW¼SW¼".

8. On the same page, in the second column, on line 11 within the description for Sec. 33, "W½SEW¼" should read "W½SE¼".

9. On the same page, in the second column, on the second line from the bottom, "T.44N., 1W." should read "T.44N., R.1W.".

Kemp Conn,

Deputy Assistant Director, Land and Renewable Resources.

[FR Doc. 92–21932 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–55–M

[NV–940–4214–10; N–19622]

Determination Regarding Opening of Withdrawn Lands Known as the Department of Navy's Bravo 20 Bombing Range to Mineral Operation and Development; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 12(a) of Public Law 99–606, as amended by Public Law 100–338 in 1988, the Nevada State Director has determined, after conferring with the Commanding Officer, Naval Air Station, Fallon, that no withdrawn lands within the Bravo 20 Bombing Range are suitable to opening for operation under the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Bravo 20 Bombing Range is closed to the public.

FOR FURTHER INFORMATION CONTACT: Mike Phillips, Area Manager, Bureau of Land Management, Lahontan Resource Area, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, 702–885–6115.

SUPPLEMENTARY INFORMATION: The Military Lands Withdrawal Act of 1986 (Pub. L. 99–606), as amended, provided for the withdrawal of lands for military purposes in four states, including 21,600 acres in Churchill County of Nevada for the Bravo 20 Bombing Range (see **Federal Register** notice, Vol. 52, No. 21, page 3176, dated February 2, 1987, and **Federal Register** notice, Vol. 52, No. 40, page 6227, dated March 2, 1987, for the legal description of the affected lands).

Section 12(a) of Public Law 99–606 requires a determination be made as to which, if any, of the withdrawn lands may be considered for opening to operation under the Mining Law of 1872, the Mineral Lands Leasing Act of 1920, as amended, the Mineral Leasing Act for Acquired Lands of 1947, the Geothermal Steam Act of 1970, or any one or more of such Acts. The Department of the Navy has closed the Bravo 20 Bombing Range lands from public access to protect the public from injury due to ordnance hazards and to ensure that military

programs can be conducted without disruption. Therefore, it has been determined that no withdrawn lands within Bravo 20 Bombing Range are suitable to opening for mineral exploration and development.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92–21947 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Harry Long, Valley Center, CA, PRT–770047.

The applicant requests a permit to import 28 captive-hatched scarlet chested parakeets (*Neophema splendida*) from Snavelhof Breeding Farms, Zuidwolde, The Netherlands for enhancement of propagation and survival of the species.

Applicant: National Zoological Park, Washington, DC, PRT–771380.

The applicant requests a permit to export samples of blood collected from captive-born Eld's deer (*Cervus eldi thamin*) and Pudu (*Pudu pudu*) for genetic analysis at the Zoological Society of London.

Applicant: Chicago Zoological Society, Brookfield, IL, PRT–770279.

The applicant requests a permit to import blood samples taken from captive-held black-handed spider monkeys (*Ateles geoffroyi frontatus* and *Ateles geoffroyi panamensis*) of wild origin from Panama, Costa Rica, Nicaragua, El Salvador, Honduras, Belize and Guatemala for the purposes of scientific research and enhancement of propagation and survival of the species.

Applicant: Kurt Landig, Fremont, OH, PRT–770790.

The applicant requests a permit to import one female brown-eared pheasant (*Crossoptilon mantchuricum*) from Dan Bruce, Speedwell Bird Sanctuary, Canada, for enhancement of propagation and survival of the species. The pheasant was hatched in captivity in England and previously exported to Canada.

Applicant: Omaha's Henry Doorly Zoo, Omaha, NE, PRT–771275.

The applicant requests a permit to import tissue samples collected from wild and captive-born gaur (*Bos gaur*) in Malaysia. DNA will be extracted for genetic evaluation of subspecies for enhancement of the propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 4, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–21898 Filed 9–10–92; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan; Proposed Establishment of Lake Wales Ridge National Wildlife Refuge; Highlands and Polk Counties, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment and Land Protection Plan for the proposed establishment of Lake Wales Ridge National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Highlands and Polk Counties, Florida. The purpose of the proposed refuge is to protect and manage up to 12,200 acres of rare Florida scrub habitats and their associated endangered and threatened plants and animals along the Lake Wales Ridge in central Florida. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the State of Florida, The Nature Conservancy, and the Archbold Biological Station. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment and land protection plan will be available to the public for review and comment on October 1, 1992. Written comments must be received no later than November 13, 1992, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street SW., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed Lake Wales Ridge National Wildlife Refuge are to (1) significantly enhance the recovery of 13 federally listed endangered and threatened plants, (2) support the recovery of 13 additional rare plants that are candidates for listing as endangered or threatened, and (3) protect four federally listed threatened wildlife species. Other species of resident and migratory wildlife would also benefit from the protection that would be afforded by the refuge.

The Lake Wales Ridge is an ancient system of beaches and sand dunes in central Florida, stretching from Ocala National Forest to southern Highlands County. This ridge was once a part of the old peninsula that existed when much of Florida was under the sea millions of years ago. The ridge's scrub vegetation is the remnant of an ancient ecosystem estimated to be of Miocene, Pliocene, or Pleistocene age (one to three million years old). It far exceeds the age of the ancient forests of the Pacific Northwest, some of which originated after the recession of continental glaciers about 10,000 years ago.

The interior scrubs of the Lake Wales Ridge are usually composed of dense but sometimes patchy stands of dwarfed evergreen shrubby oaks, sand pine, scrub hickory and Florida rosemary, often with a lichen-dominated ground cover. Because of their long period of biological evolution, these interior scrubs harbor a great number of endemic plants and animals, many of

which are found nowhere else in the world.

Scientists estimate that before the arrival of European settlers, about 80,000 acres of ancient scrub existed along the Lake Wales Ridge. Today, about 85% of the ridge's original scrub habitat has been lost to citrus farming and residential and commercial development. The remaining scrub habitats are now scattered throughout the ridge and are rapidly being destroyed to make way for new citrus groves, cattle pastures, and commercial and residential areas. In addition, the population of Highlands and Polk Counties is steadily increasing, with accompanying increases in real estate development. Many of the rare scrub communities are now threatened with extinction. This ancient ecosystem, which was once among the most distinctive in the country, is now at a crossroads.

The proposed Lake Wales Ridge National Wildlife Refuge represents an unprecedented opportunity to protect not only a number of endangered and threatened plants and animals, but also one of the rarest and most severely threatened vegetation communities in North America. The Endangered Species Act of 1973, as amended, seeks to provide "a means whereby the ecosystems upon which endangered and threatened species depend may be conserved" (Section 2[b]).

Dated: August 31, 1992.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 92-21943 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The public is invited to comment on the following application for a permit to conduct certain activity with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.* and the regulations governing marine mammals (50 CFR part 18).

Applicant: U.S. Fish and Wildlife Service, Manatee Coordinator, Jacksonville, Florida.

Type of Permit: Take for enhancing the survival or recovery of the species [Sec 104 (c)(4)(A) of the Marine Mammal Protection Act].

Name and Number of Animals: West Indian manatee (*Trichechus manatus*) Exact amount unknown.

Summary of Activity to be Authorized: The applicant proposes to take (rescue and rehabilitate), transfer between facilities, and conduct research with West Indian manatees as outlined in the Florida Manatee Recovery Plan. Authorization is also requested to issue Letters of Authorization (LOA's) to private groups and facilities capable of conducting such activities for enhancement of survival of manatees. These activities were previously conducted under U.S. Fish and Wildlife Service's permit PRT-684532.

Source of Marine Mammals: Natural range of the West Indian manatee in the United States and Puerto Rico.

Period of Activity: September 1992 until May 1997.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the applications, or request for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203, within 30 days of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of a hearing is at the discretion of the Director.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in room 432, 4401 North Fairfax Drive, Arlington, Virginia.

Dated: September 4, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-21899 Filed 9-10-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 303-TA-23 (Final)]

Ferrosilicon From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of a Final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of a final countervailing duty investigation (No. 303-TA-23 (final)) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of ferrosilicon,[1] provided for in subheadings 7202.21.10, 7202.21.50, and 7202.29.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be subsidized by the Government of Venezuela.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on ferrosilicon from Venezuela. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for October 29, 1992).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202-205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 303 of the Act (19 U.S.C. 1303) are being provided to manufacturers,

[1] The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than 4 percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than 3 percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation.

producers, or exporters in Venezuela of ferrosilicon. The investigation was requested in a petition filed on May 22, 1992, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; Oil, Chemical & Atomic Workers Union (local 389); United Autoworkers of America Union (locals 523 and 12646); and United Steelworkers of America Union (locals 2528, 3081, and 5171).

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: September 4, 1992.

Paul R. Bardos,

Acting Secretary

[FR Doc. 92–21881 Filed 9–10–92; 8:45 am]

BILLING CODE 7020–02–M

[Inv. Nos. TA–131–19, 503(a)–24, and 332–331]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On August 17, 1992, the Commission received a request from the U.S. Trade Representative (USTR) requesting certain Commission advice under sections 131 and 503 of the Trade Act of 1974 and section 332(g) of the Tariff Act of 1930. Following receipt of that request, the Commission instituted investigation Nos. TA–131–19, 503(a)–24, and 332–331 in order to:

(1) Provide advice, pursuant to sections 131(b) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151(b) and 2463(a)), with respect to each article listed in part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under Generalized System of Preferences (GSP);

(2) provide advice pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(a) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of the removal of French doors, provided for in HTS subheading 4418.20.00(pt) (listed in part B of the attached Annex), from eligibility for duty-free treatment under the GSP;

(b) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of the removal of phthalic anhydride, provided for in HTS subheading 2917.35, from Mexico and/or Venezuela (listed in part C of the attached Annex), from eligibility for duty-free treatment under the GSP;

(c) In accordance with section 504(d) of the Trade Act of 1974, which exempts from one of the competitive need limits in section 504(c) of the Trade Act of 1974 articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, with respect to whether products like or directly competitive with the articles in part A of the attached Annex were being produced in the United States on January 3, 1985.

(d) With respect to whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits for countries specified with respect to the articles listed in part D of the attached Annex and for Thailand with respect to the article provided for in HTS subheading 2009.40.40, for Zimbabwe with respect to the article provided for in HTS subheading 7202.50.00, and for Malaysia with respect to HTS subheading 8527.31.50.

(e) With respect to whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 504(c)(2) of the 1974 Act, but not a waiver of the competitive need limits specified in section 504(c)(1) of the 1974 Act, for Brazil with respect to the article provided for in HTS subheading 8527.21.10 listed in part D, the foregoing article for which Brazil currently is subject to the reduced competitive need limits specified in section 504(c)(2)(B) of the 1974 Act.

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) of the Trade Act of 1974 (except as noted in the USTR letter with respect to articles for Thailand included under HTS subheading 2009.40.40, for Zimbabwe included under HTS subheading 7202.50.00, and for Malaysia included under HTS subheading 8527.31.50).

As requested by USTR, the Commission will seek to provide its advice not later than November 30, 1992.

EFFECTIVE DATE: September 2, 1992.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. C.B. Stahmer (202–205–3321)
(2) Textiles and apparel, Ms. Jackie Jones (202–205–3466)
(3) Chemical products, Mr. James Raftery (202–205–3365)
(4) Minerals and metals, Ms. Linda White (202–205–3427)
(5) Machinery and equipment, Ms. Georgia Jackson (202–205–3399)
(6) Services and electronic technology, Mr. Tom Sherman (202–205–3389)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

BACKGROUND: The letter from the USTR provided the following by way of background.

The Trade Policy Staff Committee (TPSC) announced in the **Federal Register** on August 21, 1992, the acceptance of product petitions for modification of the Generalized System of Preferences (GSP) received as part of the 1992 annual review. According to the announcement, modifications to the GSP which may result from this review will be announced in early 1993, and become effective July 1, 1993.

PUBLIC HEARING: A public hearing in connection with this investigation is currently scheduled to begin at 9:30 a.m. on October 8–9, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC.

All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on September 18, 1992. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on September 23, 1992. The deadline for filing post hearing briefs is the close of business on October 16, 1992.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 16, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued, September 3, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

Annex I (HTS Subheadings) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

1302.39.00(pt)	4107.10.00
4011.50.00	2009.40.40 [2]
1604.13.10	6505.90.8015
2902.60.00	7202.50.00 [3]
2906.12.00	8527.31.50 [4]

[1] See USTR **Federal Register** Federal Register notice of August 21, 1992 (57 F.R. 38088) for article descriptions.

B. Petition to remove a product from the list of eligible articles for the Generalized System of Preferences.

4418.20.00(pt)

C. Petitions to remove duty-free status from beneficiary developing countries for a product on the list of eligible articles for the Generalized System of Preferences.[5]

2917.35.00 (Mexico and/or Venezuela)

D. Petitions for waiver of competitive need limit for products on the list of eligible products for the Generalized System of Preferences.

2909.19.10(pt) (Venezuela)
4104.31.20 (Thailand)
7614.90.20 (Venezuela)
8407.34.2080 (Brazil)
8521.10.0020 (Malaysia)
8527.11.60 (Malaysia)
8527.21.10 (Brazil)

[FR Doc. 92–21868 Filed 9–10–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32146]

Minnesota Transportation Museum, Inc.—Trackage Rights Exemption—Wisconsin Central Ltd.

Wisconsin Central Ltd. (WCL), has agreed to grant trackage rights to the Minnesota Transportation Museum, Inc. (MTM), to conduct passenger operations over its line between milepost 23.7 at Withrow, MN, and milepost 63.1 at Amery, WI, a distance of 39.4 miles. The exemption became effective on September 5, 1992.[1]

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: Louis E. Gitomer, Taylor, Morell & Gitomer, 919 18th Street, NW., suite 210, Washington, DC 20006.

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).

Decided: September 4, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–21962 Filed 9–10–92; 8:45 am]

BILLING CODE 7035–01–M

[2] Advice is also requested on waiving the competitive need limit for Thailand on articles in this subheading.

[3] Advice is also requested on waiving the competitive need limit for Zimbabwe on articles in this subheading.

[4] Advice is also requested on waiving competitive need limit for Malaysia on articles in this subheading.

[5] While the Trade Policy Staff Committee (TPSC) review will focus on the specified countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well as the GSP status of the entire article.

[1] By decision served September 4, 1992, the Commission granted MTM's request for waiver of 49 CFR 1180.4(g)(1) to permit an expedited effective date.

[Finance Docket No. 32133]

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), applicants have notified the Commission of their intent to file an application seeking authority for Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company to acquire control of Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company. The Commission finds this to be a major transaction as defined in 49 CFR part 1180. Applicants have proposed an accelerated procedural schedule, and the Commission invites interested parties to comment on it.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than September 28, 1992. Applicants' reply is due 10 days thereafter.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610, (TDD for hearing impaired: (202) 927–5721.)

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32133 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32133, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, 901 Fifteenth Street, NW., Washington, DC 20005.
Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044.

SUPPLEMENTARY INFORMATION: On August 12, 1992, Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), and Missouri Pacific Railroad Company (MPRR) (collectively UP), and Chicago and North Western Holdings Corp. (Holdings), and Chicago and North Western Transportation Company (CNWT) (UP, Holdings, and CNWT are referred to collectively as applicants), filed a notice of intent indicating that they will file an application seeking Commission approval and authorization under 49 U.S.C. 11343–45 for the common control of UPRR/MPRR and CNWT.

The proposal arises out of the 1989 acquisition of CNW Corporation, parent of CNWT, by a group of investors led by Blackstone Capital Partners L.P. (Blackstone). As a result of that transaction, CNWT became an indirect wholly owned subsidiary of Chicago and North Western Acquisition Corp. which, in turn, is a wholly-owned subsidiary of Holdings. CNWT is a Class I railroad and also controls or has an interest in various rail subsidiaries, including Western Railroad Properties, Inc., a Class II railroad, and Midwestern Railroad Properties, Inc., a non-operating Class III railroad.[1]

In connection with the Blackstone acquisition transaction, UP Rail, Inc. (UP Rail), a wholly owned subsidiary of UPC, purchased $100 million in Holdings' nonvoting, convertible preferred stock. UP Rail also received the right to appoint a director to the board of Holdings, and UPRR and MPRR, two Class I railroad subsidiaries of UPC, received trackage rights over certain CNWT lines. In approving the trackage rights,[2] the Commission issued a declaratory order that the above-described relationships and arrangements did not give UP control over CNWT.

On April 7, 1992, Holdings completed a public offering of its common stock and recapitalization. As part of those transactions, UP Rail agreed to exchange the preferred stock for non-voting common stock of Holdings, convertible at UP Rail's request into voting common stock, and to purchase additional shares of such non-voting common stock of Holdings for cash.

Although UP presently has no plans to acquire a majority ownership in CNWT, applicants are requesting authority for the common control of UPRR/MPRR and CNWT not only to allow UP to do so but to allow applicants to take certain actions without fear of violating the prior approval requirements for common control. Specifically, applicants are seeking common control authority to: (1) Permit UP to convert the non-voting common stock of Holdings into voting common stock (constituting approximately 24 percent of Holdings' outstanding voting common stock), and to exercise its right to vote that stock; (2) permit UP, if it wishes, to increase its stock ownership in Holdings; (3) permit UP to carry out various marketing and operating coordinations between UPRR/MPRR and CNWT, short of full integration of the railroads, which it believes will strengthen rail competition and enhance efficiency; and (4) permit UP, if it wishes, to acquire majority, or even 100%, ownership of CNWT if future market conditions and business considerations warrant.

Applicants will use the year 1991 for purposes of their impact analyses to be filed in the application. They intend to file their application approximately 4 to 5 months after the filing of their notice of intent.

The Commission finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. The application must conform to the regulations set forth at 49 CFR 1180, *et seq.*, and must contain all information required there for major transactions, except as modified by advance waiver.

By petition filed August 12, 1992, applicants sought approval of an attached protective order to protect confidential and proprietary information, including contract terms, shipper-specific traffic data, and other traffic data to be submitted in connection with the control application. In a decision served August 24, 1992, the Commission's Office of the Secretary granted applicants' request.

Also on August 12, 1992, applicants filed a petition for waiver or clarification of our consolidation procedures and a petition to establish a procedural schedule. The Commission will address the waiver/clarification petition in a separate decision. The Commission is, however, seeking comments now on applicants' proposed procedural schedule, as discussed below.

Applicants' proposed procedural schedule is as follows:

Proposed Procedural Schedule

F—Primary application filed
F+30—Commission notice of acceptance of primary application published
F+75—Comments on primary application (except DOJ, DOT) due
F+89—DOJ, DOT comments on primary application due
F+103—Second lists of protective conditions due
F+117—Responsive applications due; opposition to primary application due
F+147—Commission notice of acceptance of responsive applications published
F+207—Government parties' evidence due; opposition to responsive applications due; rebuttal in support of primary application due
F+237—Responses to government parties' evidence due; rebuttal in support of responsive applications due
F+258 to F+262—Hearing on all evidence; witnesses to be cross-examined only to the extent specific need is shown in order to resolve material issues of disputed fact
F+286—Opening briefs due
F+307—Reply briefs due
F+337—Oral argument
F+1 year—Final decision

Under the proposal, immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Chief Administrative Law Judge will have the authority: (1) To revise the schedule as may appear necessary; and (2) initially to resolve any discovery disputes. The dates for filing post-hearing briefs and for oral argument before the Commission will be set upon completion of oral hearing before the Chief Administrative Law Judge.

Applicants state that this schedule is modeled closely after the schedule in

[1] The Commission authorized Blackstone's control of CNW Corporation and CNWT in *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. & Chicago, et al.*, 5 I.C.C.2d 1015 (1989), *aff'd sub nom. Brotherhood of Ry. Carmen (Div. of TCU) v. ICC*, 917 F.2d 1136 (8th Cir. 1990).

[2] See *Union Pacific R.R., et al.—Trackage Rights Over CNW*, 7 I.C.C. 2d 177 (1990).

Finance Docket No. 30800, *Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R.—Control—Missouri-Kansas-Texas R.R.*, Decision No. 11, served March 19, 1987 (*UP–MKT*). That schedule was also entered following publication of a proposed schedule for comment. *See* 41 FR 39718 (1986).

Applicants, however, propose certain modifications to the schedule in *UP–MKT*. First, items relating to abandonment applications have been deleted, because no abandonment applications will be filed in this case. Second, a provision in the *UP–MKT* schedule for bifurcating responsive applications has been omitted, since, with early advance notice to all interested persons of the proposed schedule, applicants believe that there should be no difficulty in completing any necessary discovery and submitting any responsive applications 4 months after the primary application is filed. And third, the approach to setting dates for an oral hearing (if one is held), the oral argument, and a final decision is somewhat different from their treatment in *UP–MKT*. According to applicants, although the latter decision provided 2–3 weeks for oral hearing, no party ever requested a hearing, notwithstanding that there were nine responsive applicants. Applicants add that the *UP–MKT* decision also called for a 2-month hiatus between the filing of reply briefs and the holding of oral argument, and set no date for a final decision. Applicants suggest here that, tentatively, a single week be set aside for any hearing, that the time between the close of briefing and oral argument be shortened to 1 month, and that a target date of 1 year after the filing of the principal application be set for a final decision.[3]

Applicants believe that the *UP–MKT* schedule should be more than adequate for this proceeding, which, while involving the common control of Class I railroads, does not present, as an end-to-end transaction, the competitive issues that were present in *UP–MKT*, a largely parallel transaction. Accordingly, applicants request that the Commission publish the above schedule for comment, review any comments received, and enter the proposed schedule as soon as possible.

We invite interested parties to submit written comments on the proposed schedule. Comments must be filed within 15 days of publication of this notice in the **Federal Register**. Applicants may reply within 10 days thereafter.

Decided: September 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–21963 Filed 9–10–92; 8:45 am]

BILLING CODE 7035–01–M

[3] We note that this proposed schedule contains substantially shorter time periods that those provided for in our rules at 49 CFR 1180.4(a)–(e). For example, 1180.4(e) requires that the evidentiary proceeding for a major transaction be completed 24 months after acceptance of the primary application, with a final decision to be issued within 180 days thereafter. Other minor differences also exist.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Certain Property Owned by Salomon Brothers Inc.; Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States publishes below the comment it received on the proposed Final Judgment in *United States* v. *Certain Property Owned by Salomon Brothers Inc., Salomon Brothers Inc., Real Party in Interest*, 92 Civ. 3700, filed in United States District Court for the Southern District of New York, together with the response of the United States to that comment.

Copies of the response and the public comment are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and for inspection at the Office of the Clerk for the United States District Court for the Southern District of New York, Foley Square, New York, New York.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the U.S. District Court for the Southern District of New York

United States of America, Plaintiff, against *Certain Property Owned by Salomon Brothers Inc.*, Defendant, *Salomon Brothers Inc.*, Real Party in Interest.

[92 Civ. 3700 (RPP)]

Response of the United States to Public Comments and Motion for Entry of Final Judgment

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h)) ("APPA"), the United States of America hereby files its Response to Public Comments and moves for entry of the proposed Final Judgment in this *in rem* civil antitrust proceeding.

I

Introduction

The United States has carefully reviewed the comment submitted on the proposed Final Judgment and remains convinced that entry of the Final Judgment is in the public interest.

II

Background

This action was commenced on May 20, 1992, when the United States filed a complaint alleging that Salomon Brothers Inc. ("Salomon") and unnamed co-conspirators violated Section 1 of the Sherman Act by agreeing to coordinate their actions in trading May 1993 two-year notes issued by the United States Treasury on May 31, 1991 ("May two-year notes"). The complaint alleged that the conspiracy affected the price of the notes and the interest rate paid by persons, such as Salomon, who borrowed cash through repurchase agreements to finance their ownership of the notes. The complaint sought forfeiture of $27.5 million under 15 U.S.C. 6.

On the same date that it filed the complaint, the United States filed a proposed Final Judgment and a Stipulation between the United States and Salomon pursuant to which the United States and Salomon consented to the entry of the proposed Final Judgment. The proposed Final Judgment provides for a payment of $27.5 million (plus interest) to the United States. The United States and Salomon also stipulated that entry of the proposed Final Judgment would satisfy the claim of the United States in this action *in rem*.

Simultaneous with the filing of the complaint and proposed Final Judgment, the United States Department of Justice and Salomon also entered into a Civil Settlement Agreement pursuant to which Salomon agreed to pay $55 million to the United States Department of Justice Asset Forfeiture Fund, of which $27.5 million (plus interest) would be paid pursuant to the proposed Final Judgment in this action and $27.5 million would be paid pursuant to 18 U.S.C. 981(a)(1)(C). Salomon also agreed to pay $13 million to the United States to satisfy claims under 31 U.S.C. 3729 and under the common law. Salomon also agreed at that time to pay $122 million of civil penalties under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Public Law 101–429, and to pay $100 million into a fund for

civil claimants. Any sums remaining in that fund will be paid to the United States Treasury. The total amount of the settlement was $290 million plus certain interest.

On June 18, 1992, the United States filed a Competitive Impact Statement in this action explaining the basis of the complaint and for the government's conclusion that entry of the proposed Final Judgment is in the public interest.

The Stipulation provides that the proposed Final Judgment may be entered by the Court after completion of the procedures required by the APPA.

III

Compliance With the APPA

Upon publication of this Response in the **Federal Register**,[1] the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed, and the Court will be free to enter the proposed Final Judgment. The United States hereby certifies that it has complied with all the requirements of the APPA as follows:

A. Stipulation, Proposed Final Judgment and Competitive Impact Statement

The United States filed the Stipulation for Entry of the Final Judgment and the proposed Final Judgment with the court on May 20, 1992. The United States filed the Competitive Impact Statement, including the information required by 15 U.S.C. 16(b) with the Court on June 18, 1992. On July 6, 1992, the Complaint, proposed Final Judgment, Competitive Impact Statement, and Civil Settlement Agreement were published in the Federal Register (57 FR 29743).[2] The Department of Justice also furnished copies of those documents to all persons who requested them.

B. Newspaper Notices

The United States published newspaper notices of the proposed Final Judgment and the Competitive Impact Statement in *The New York Times* and *The Washington Post* daily from June 28, 1992 through July 4, 1992, as required by 15 U.S.C. 16(c).[3]

C. Statements Regarding Communications

As required by 15 U.S.C. 16(g), on June 4, 1992, Salomon filed a description of its communications (or communications made on its behalf) with officers and employees of the United States concerning the proposed Final Judgment. Salomon filed an amended statement on September 1, 1992.

D. Waiting Period, Comments and Publication of Comments and Responses

The sixty-day comment period proscribed in 15 U.S.C. 16(d) will expire on September 4, 1992. The Department has thus far received one comment on the Final Judgment.[4] The response to that comment is below.

IV

Response to Comment

The only comment the Department has received relating to the proposed Final Judgment was submitted by Three Crown Limited Partnership ("Three Crown"). Three Crown is suing Salomon and several other defendants for alleged violations of the Securities and Exchange Act of 1934, the Racketeer Influenced and Corrupt Organization Act, the Sherman Antitrust Act and other statutes based upon trading and certain alleged acts they undertook in relation to the April 1993 two-year Treasury notes auctioned on April 24, 1991 ("April two-year notes") and May two-year notes.

Three Crown raises five points in its comment:

1. It is not clear whether the government's settlement with Salomon relates to the April two-year notes as well as to the May two-year notes. If the settlement includes the April two-year notes, it is "far too low."

2. If the proposed Final Judgment does not bar the Department from bringing antitrust claims against Salomon relating to other Treasury issues, the proposed Final Judgment should be clarified.

3. The Competitive Impact Statement does not state why claims relating to the April two-year notes have been excluded from the settlement, although the "squeeze" relating to the April two-year notes lasted longer than the squeeze relating to the May notes and was more harmful to the government securities market and investors.

4. The Competitive Impact Statement does not state how the asset forfeiture "is apportioned between the various Treasury issues."

5. If the government's investigation is complete, "the discovery materials created and obtained by the Government * * * should in order to further the purposes of the Sherman Antitrust Act and Clayton Act be furnished or made available to private litigants."

On the first three points, the proposed Final Judgment resolves only the claim made in the complaint related to the May two-year notes. The Final Judgment must also be considered in light of the Civil Settlement Agreement as well as the size of the overall resolution reached by the United States.

The Civil Settlement Agreement does, however, affect other potential civil antitrust claims that could be brought by the United States. With the exception of an on-going industry-wide investigation of pre-auction conduct, the Civil Settlement Agreement releases any claims by the United States under the federal antitrust laws for damages, fines, penalties, forfeitures or other remedies relating to conduct covered by the agreement, including *inter alia:*

> * * * conduct of communications from January 1, 1989, through August 9, 1991 related to (i) bidding for itself and others in all auctions for United States Treasury bills, notes and bonds. * * * (ii) trading and financing on its own behalf or on behalf of others of all such United States Treasury and REFCORP securities and (iii) post-auction communications concerning the bidding, trading and financing of all such Treasury and REFCORP securities.

Any civil antitrust claim relating to Salomon's trading or financing of the April two-year notes is included in that release.[5]

The United States concluded that such a release was fully appropriate in the context of the overall $290 million settlement with Salomon. Moreover, the United States had not concluded that an antitrust action against Salomon based upon its activities relating to the April two-year notes should have been

[1] This Response was submitted to the **Federal Register** for publication on September 3, 1992, one day prior to the deadline for public comments. The United States will file a certification with the Court reflecting publication of this Response once it has occurred. If any additional comments should be received prior to the conclusion of the sixty-day waiting period on September 4, the United States will submit those comments and its Response to the **Federal Register** and the Court as soon thereafter as practicable. If no additional comments are received, the Court will be free to enter the proposed Final Judgment once the United States has filed with the Court its certificate of publication of this Response in the **Federal Register**.

[2] A copy of the **Federal Register** Notice is attached to this Response as Exhibit A.

[3] Copies of the newspaper notices and the certificates of publication are attached as Exhibit B.

[4] The comment, entitled "Request for Modification of the Proposed Final Judgment," is attached as Exhibit C. Copies of the exhibits attached to the comment can be obtained by contacting the Communications and Finance Section, Antitrust Division, United States Department of Justice, 555 Fourth St., NW., room 8104, Washington, DC 20001.

[5] The Civil Settlement Agreement does not bar the Department from bringing a criminal antitrust action against Salomon on any matter, although the Department announced on May 20 that it would not seek criminal charges against Salomon on the matters covered by the Civil Settlement Agreement.

alleged.[6] Further, whether the United States should have brought an action against Salomon relating to the April two-year notes is a matter of prosecutorial discretion and is beyond the scope of this proceeding.

The Department is satisfied that the sum to be paid is adequate to punish Salomon for the conduct alleged in the complaint and to release it from civil liability under the antitrust laws for other conduct covered by the Civil Settlement Agreement. The $27.5 million settlement would represent the largest forfeiture or other penalty ever paid to the government by a defendant in an antitrust case and is likely to have a substantial deterrent effect on future violations.[7]

Finally, even if the Department had charged Salomon with violating the antitrust laws for conduct related to the April two-year notes, the settlement of such an action would have had no precedential effect on any private litigation, such as the suit brought by Three Crown. In the resolution of this action, Salomon did not admit to having committed the violation charged. This is typical for antitrust settlements and is consistent with 15 U.S.C. 16(a).[8]

As its fourth point, Three Crown states that the Competitive Impact Statement does not explain how the $27.5 million asset forfeiture is "apportioned between the various Treasury issues." As the charge in the complaint relates only to the May two-year notes, there is no apportionment among "various Treasury issues." The settlement resolves Salomon's civil antitrust liability for the conduct covered by the Civil Settlement Agreement.

As a final matter, Three Crown requests that if the government's investigation has been completed, the "discovery materials created and obtained" by the government in the course of its investigation be made available to private litigants. The government's investigation is continuing and if materials created or obtained by the government were to be released at this time, the government's ability to investigate and prosecute violations of the law could be substantially impaired. As a litigant, Three Crown has the ability and ample opportunity to obtain discovery from Salomon and other parties. This issue, raised by a private litigant in another action, is unrelated to the purpose of this proceeding—determining whether the proposed Final Judgment is the public interest.

[6] Three Crown, of course, may be able to make a claim upon the $100 million fund established for civil claimants.

[7] It is worth noting that, absent applicability of 18 U.S.C. § 3571(d), the maximum fine for a violation of Section 1 of the Sherman Act is $10 million.

[8] Under 15 U.S.C. 16(a), antitrust final judgments and decrees are prima facie evidence in any action brought by another party except in the case of consent judgments and decrees entered before testimony has been taken.

V

Conclusion

For the reasons set forth in the Competitive Impact Statement and this Response, the proposed Final Judgment is in the public interest, and we ask the Court to enter the proposed Final Judgment.

Dated: September 4, 1992.

Respectfully submitted,

Jonathan M. Rich,

Attorney, United States Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 8401, Washington, DC 20001, (202) 514-5621.

Exhibits A and B

Exhibit A, the Final Judgment as originally proposed, the Competitive Impact Statement, and the Stipulation previously were published in the **Federal Register** (57 FR 29743, July 6, 1992) and are not republished herein. Exhibit B, copies of affidavits of publication of newspaper notices of the proposed Final Judgment and Competitive Impact Statement, also are omitted from publication herein; these may be requested for inspection and copying at Room 3233, Antitrust Division, Department of Justice, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the Southern District of New York.

Exhibit C

July 30, 1992.

Re: Request for Modification of the Proposed Final Judgment in *United States of America* v. *Salomon Brothers Inc., 92 Civ. 3700 (RPP).*

Mr. Richard Rosen,

Acting Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 8104, Washington, DC 20001.

Dear Mr. Rosen: We represent Three Crown Limited Partnership ("Three Crown") in the action entitled *Three Crown Limited Partnership, et al.* v. *Caxton Corporation, et al.*, 92 Civ. 3142 (RLC) (*"Three Crown"*), pending in the United States District Court for the Southern District of New York before the Honorable Robert L. Carter. Salomon Brothers, Inc. is one of the defendants in this action.

Three Crown files this "Request for Modification of the Proposed Final Judgment" in *United States* v. *Salomon Brothers, Inc.*, 92 Civ. 3700 (RPP), pursuant to 15 U.S.C. § 16 (b) and (d) and Section V of the "Competitive Impact Statement" filed with the Court on June 18, 1992 in connection with the settlement of *United States* v. *Salomon Brothers.* (See Appendix, [1] Exhibit 1: Complaint, Stipulation, Final Judgment, Competitive Impact Statement, Civil Settlement Agreement and Final Judgment of Permanent Injunction and Other Relief as to Salomon Inc. and Salomon Brothers, Inc. [hereinafter referred to as the "Settlement Papers"].)

The *Three Crown* plaintiffs are familiar with the activities of Salomon Brothers and the other co-conspirators with regard to the manipulation of the Treasury markets. (See Exhibit 2, White Paper of H. Barndt Hauptfuhrer dated February 3, 1992.)

It is important to note that the *Three Crown* complaint, filed on April 30, 1992,[2] preceded the Justice Department's complaint by twenty days. The Justice Department complaint was filed on May 20, 1992 and contained antitrust allegations that were nearly identical to the *Three Crown* complaint, at least with respect to the May 1993 Two Year Notes and the financing mechanism of the May 1993 Two Year Notes. (See Exhibit 3, Three Crown Complaint dated April 30, 1992.)

Three Crown believes that the proposed Settlement Papers do not comply with the requirements of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e) in the following respects.[3]

1. The proposed Settlement Papers, if read in light of the Justice Department's May 20, 1992 Complaint, address only Salomon Brothers' manipulation of the May 1993 Two Year Notes and the financing mechanism surrounding the May 1993 Two Year Notes. It is not clear, however, whether the proposed settlement is intended to resolve all of the Justice Department's potential antitrust claims against Salomon Brothers, including settlement of any possible claims against Salomon Brothers relating to its conduct in other Treasury issues, including, but not limited to the April 1993 Two Year Notes auctioned by the United States Government on April 17, 1991. If that is the case, Three Crown believes the monetary settlement the Justice Department has tentatively reached with Salomon Brothers is far too low.

2. If the proposed Final Judgment does not preclude the government from asserting

[1] For ease of reference, a copy of all the documents referred to in this letter are assembled in the attached Appendix.

[2] Three Crown filed its First Amended Complaint on June 3, 1992.

[3] 15 U.S.C. 16(e) states as follows: Before entering any consent judgment proposed by the United States under this section, the court shall determine that their entry of such judgment is in the public interest. For purposes of such determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

antitrust claims against Salomon Brothers relating to Salomon Brothers' activities involving other Treasury issues, then Three Crown believes the proposed Final Judgment should clarify that point.

3. The Justice Department Competitive Impact Statement fails to state why the manipulation of the April 1993 Two Year Notes or the financing mechanism of the April 1993 Two Year market, which, on information and belief, Salomon controlled, has been omitted in its entirety from the settlement. The squeeze in the May 1993 Two Year Notes lasted from May 31, 1991, to on or about July 8, 1991. The squeeze in the April 1993 Two Year Notes lasted longer: from April 30, 1991, to on or about September 10, 1991. Even if the April 1993 Two Year Note squeeze did not apparently involve auction violations, it was far more harmful to the government securities market and market participants than the May 1993 Two Year Squeeze. [See Exhibit 4 Daily Yield Curve Analysis Charts.]

4. The Justice Department Competitive Impact Statement omits any information relating to how the $27.5 million forfeiture defined in the Civil Settlement Agreement between Salomon and the Justice Department is apportioned between the various Treasury issues.

5. The Settlement Papers should explicitly state whether the investigation against Salomon Brothers is complete. If the investigation is complete, then the discovery materials created and obtained by the Government in its investigation into Salomon Brothers' manipulation of the May 1993 Two Year Notes, including the financing mechanism surrounding the May 1993 Two Year Notes, as well as other Treasury issue (i.e., April 1993 Two Year Notes) should in order to further the purposes of the Sherman Antitrust Act and Clayton Act be furnished or made available to private litigants.

Three Crown believes the above issues must be explicitly addressed in the Settlement Papers in order for them to have the clarity of purpose required by section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e).

Respectfully submitted,

Louis F. Burke,

Richard and O'Neil.

Enclosure.

cc:

The Honorable Robert P. Patterson,
United States District Court, Southern District of New York, United States Courthouse, 40 Foley Square, New York, New York 10007

Hayes Gorey, Esq.,
Assistant United States Attorney, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 8104, Washington, D.C. 20001

[FR Doc. 92-21733 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on July 28, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS: Advanced Processing Technology, Inc., Norman, OK; Campbell Grinder Company, Muskegon, MI; Cimflex Teknowledge Corporation, Bridgeville, PA; Enterprise Integration Technologies Corporation, Palo Alto, CA; ICAD, Inc., Cambridge, MA; ICAMP, Inc., Los Alamos, NM: Onset BIDCO, Inc., Livonia, MI; Paradigm Shift International, Inc., Oakland, CA; Perceptron, Inc., Farmington Hills, MI; Saginaw Machine Systems, Inc., Saginaw, MI; Salerno Manufacturing Systems, Inc., Troy, MI; Spatial Technology, Inc., Boulder, CO; Spectrix Corporation, Evanston, IL; Timesavers, Inc., Minneapolis, MN; Utilase Systems, Inc., Detroit, MI; and W.D. Johnson, Inc., Sterling Heights, MI.

In addition to the foregoing additions to NCMS's active membership, one NCMS active member, Giddings & Lewis, Inc., acquired the Cross & Trecker Corporation and with that acquisition subsumed the memberships of two former NCMS active members, Kearney & Trecker Corporation (d/d/a KT-Swasey) and The Cross Company.

The following organizations recently were accepted as affiliate members of NCMS: Georgia Institute of Technology Manufacturing Research Center, Atlanta, GA; Metalworking Technology, Inc., Johnstown, PA; Pennsylvania Research Laboratory, State College, PA; and Rio Grande Technology Foundation, Albuquerque, NM.

Except as indicated above, no other changes have been made in the membership, objectives, or planned activities of NCMS.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the Federal Register pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the Federal Register on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, March 18, 1991, April 29, 1991, July 25, 1991, October 31, 1991, January 27, 1992, and April 23, 1992, notices of which the Department published in the Federal Register on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), March 12, 1991 (56 FR 10444), May 16, 1991 (56 FR 22740-41), June 13, 1991 (56 FR 27273), September 4, 1991 (56 FR 43796), February 3, 1992 (57 FR 4062), March 11, 1992 (57 FR 8675-76), and June 11, 1992 (57 FR 24816) respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-21928 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; National Forest Products Association

Notice is hereby given that, on June 8, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq., ("the Act"), the National Forest Products Association filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general area of planned activities, are given below.

The parties to the joint venture are: Alpine Engineered Products, Inc., Pompano Beach, FL; American Institute of Timber Construction, Vancouver, WA; California Redwood Association, Novato, CA; Canadian Wood Council, Ottawa, Ontario, Canada; National Forest Products Association, Washington, DC; National Timber Piling

Council, Rye, NY; Southeastern Lumber Manufacturers Association, Forest Park, GA; Southern Forest Products Association, Kenner, LA; Southern Pine Inspection Bureau, Pensacola, FL; Structural Board Association, Willowdale, Ontario, Canada; Trus Joist Macmillan, Boise, ID; Truss Plate Institute, Madison, WI; West Coast Lumber Inspection Bureau, Portland, OR; Western Wood Products Association, Portland, OR; Willamette Industries, Inc., Portland, OR; and Wood Truss Council of America, Madison, WI.

The nature of the joint venture is to produce a new reliability-based wood design manual incorporating load and resistance factor design (LRFD). The objective of the research effort is to integrate a previously developed LRFD specification together with wood product engineering data to provide engineers and architects with an alternative to the currently used allowable stress design method, and to present this new comprehensive design methodology in an easy-to-use, published format.

Joseph H. Widmar,

Director of Operation, Antitrust Division.

[FR Doc. 92-21927 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 10, 1992, Abbott Laboratories, Attn: D-209, Abbott Park, Abbott Park, Illinois 60064-3500, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Ecgonine (9180).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21960 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 10, 1992, Abbott laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dextropropoxyphene, bulk (non-dosage forms).	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21957 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 9, 1992, Applied Science Labs Division of Alltech Associates Inc., 2701 Carolean Industries Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphletamine (1475)	I
N,N-dimethylamphetamine (1480)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-methylenedioxy-N-ethylemphetamine (7404).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethlyamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-21956 Filed 9-10-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 12, 1992, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
3,4-Methylenedioxyamphetamine (7400).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: September 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–21958 Filed 9–10–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PCIE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the current membership of the PCIE Performance Review Board.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspector General.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the President's Council on Integrity and Efficiency Performance Review Board are:

Members	Title
Agency for International Development	
Corbett M. Flannery	Assistant Inspector General for Security.
Gene Richardson	Assistant Inspector General for Investigations.
Department of Agriculture	
Charles R. Gillum	Deputy Inspector General.
James R. Ebbitt	Assistant Inspector General for Audit.
Craig L. Beauchamp	Assistant Inspector General for Investigations.
Paula F. Hayes	Assistant Inspector General for Policy Development and Resources Management.
Richard Long	Deputy Assistant Inspector General for Audit.
Everett Mosley	Deputy Assistant Inspector General for Audit.
Jeffrey Rush	Deputy Assistant Inspector General for Investigations.
Richard F. Allen	Deputy Assistant Inspector General for Investigations.
Department of Commerce	
Michael Zimmerman	Deputy Inspector General.
J. Steven Sadler	Deputy Assistant Inspector General for Regional Audits.
Charles M. Hall	Assistant Inspector General for Inspections and Resources Management.
Department of Defense	
Derek J. Vander Schaaf	Deputy Inspector General.
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management.
David A. Brinkman	Assistant Inspector General for Analysis and Followup.
Robert J. Lieberman	Assistant Inspector General for Auditing.
Edward R. Jones	Deputy Assistant Inspector General for Auditing, OAIG, AUD.
Nancy L. Hendricks	Director, Financial Management Directorate, OAIG, AUD.
Donald E. Reed	Director, Acquisition Management Directorate, OAIG, AUD.
David K. Steensma	Director, Contract Management Directorate, OAIG, AUD.
William F. Thomas	Director, Readiness and Operational Support Directorate, OAIG, AUD.
Donald E. Davis	Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG, APO.
Michael B. Suessmann	Assistant Inspector General for Departmental Inquiries.
Katherine A. Brittin	Assistant Inspector General for Inspections.
Stephen A. Whitlock	Director, Inspections Directorate, OAIG, INS.
Donald Mancuso	Assistant Inspector General for Investigations.
William G. Dupree	Deputy Assistant Inspector General for Investigations, OAIG, INV.
C. Frank Broome	Deputy Assistant Inspector General for Administration and Information Management.
Michael G. Huston	Director of Audit Planning and Technical Support, OAIG, AUD.
John F. Keenan	Director of Investigative Operations, OAIG, INV.
Joel L. Leson	Director for Criminal Policy and Oversight, OAIG, INV.
Shelton R. Young	Director of Logistics Support, OAIG, AUD.

Members	Title
Department of Energy	
Gordon W. Harvey	Assistant Inspector General for Audits.
Michael W. Conley	Assistant Inspector General for Inspections.
Paul M. Misso	Assistant Inspector General for Investigations.
M. Thomas Abruzzo	Deputy Assistant Inspector General for Investigations.
Gregory H. Friedman	Deputy Assistant Inspector General for Audit Operations.
Stanley R. Sulak	Deputy Assistant Inspector General for Audit Policy, Plans and Programs.
Department of Health and Human Services	
Thomas D. Roslewicz	Deputy Inspector General for Audit Services.
Joseph E. Vengrin	Assistant Inspector General for Audit Policy and Oversight.
John A. Ferris	Assistant Inspector General for Audit Human, Family and Departmental Services.
Dennis J. Duquette	Assistant Inspector General for Audit Financial Management.
Michael F. Mangano	Deputy Inspector General for Evaluation and Inspections.
George F. Grob	Assistant Inspector General for Evaluation and Inspections.
Larry D. Morey	Deputy Inspector General for Investigations.
Robert A. Simon	Assistant Inspector General for Criminal Investigations.
Eileen T. Boyd	Assistant Inspector General for Civil and Administrative Remedies.
Paul F. Conroy	Assistant Inspector General for Investigations Policy and Oversight.
Jane S. Tebbutt	Assistant Inspector General for Management and Policy.
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General.
John H. Greer	Assistant Inspector General for Audit.
Patrick J. Neri	Assistant Inspector General for Investigations.
Jacqulyn K. Howard	Assistant Inspector General for Management and Policy.
Robert H. Martin	Deputy Assistant Inspector General for Audit Operations.
Sebastian R. Lorigo	Deputy Assistant Inspector General for Investigations.
Department of the Interior	
Joyce N. Fleischman	Deputy Inspector General.
Thomas T. Sheehan	Assistant Inspector General for Investigations.
Harold Bloom	Assistant Inspector General for Audits.
Marvin E. Pierce	Deputy Assistant Inspector General for Audits.
Department of Justice	
Robert L. Ashbaugh	Deputy Inspector General.
Allen J. Vander-Staay	Assistant Inspector General, Management and Planning.
Guy Zimmerman	Assistant Inspector General, Audit.
Jerry Bullock	Assistant Inspector General, Investigations.
Howard Stribnick	General Counsel.
Department of Labor	
Charles C. Masten	Deputy Inspector General.
Gerald W. Peterson	Assistant Inspector General for Audit.
Sylvia T. Horowitz	Counsel to the Inspector General.
Joseph Fisch	Deputy Assistant Inspector General for Audit.
Irving A. Bassett	Assistant Inspector General for Investigations.
Gustave Schick	Assistant Inspector General for Labor Racketeering.
E. J. German	Assistant Inspector General for Resource Management and Legislative Assessment.
Department of State	
John C. Payne	Assistant Inspector General for Audit.
Milton M. MacDonald	Deputy Assistant Inspector General for Audit.
Beverly C. Lovelady	Assistant Inspector General for Policy, Planning and Management.
John Duncan	Counsel to the Inspector General.
Robert S. Terjesen	Assistant Inspector General for Investigations.
James K. Blubaugh	Deputy Assistant Inspector General for Inspections.
Department of Transportation	
Raymond J. DeCarli	Assistant Inspector General for Auditing.
John W. Lainhart IV	Assistant Inspector General for Policy, Planning and Resources.
Mario A. Lauro, Jr.	Assistant Inspector General for Inspections and Evaluations.
Alexis M. Stefani	Director, Office of Surface Transportation and Secretarial Programs.
Wilbur L. Daniels	Director, Office of Aviation, Marine, and Research Programs.
Department of the Treasury	
Robert P. Cesca	Deputy Inspector General.
Jay M. Weinstein	Assistant Inspector General for Audit.
Gary L. Whittington	Assistant Inspector General for Policy, Planning and Resources.
John N. Balakos	Assistant Inspector General for Oversight and Quality Assurance.
Dennis S. Schindel	Deputy Assistant Inspector General for Audit Operations.

Members	Title
Karla W. Corcoran	Deputy Assistant Inspector General for Audit Program.
Department of Veterans Affairs	
Michael J. Costello	Assistant Inspector General for Investigations.
Alastair M. Connell	Assistant Inspector General for Health Care Inspections.
Michael G. Sullivan	Assistant Inspector General for Auditing.
John M. Clarkson	Deputy Assistant Inspector General for Investigations.
Michael Slachta, Jr.	Deputy Assistant Inspector General for Auditing.
Jack H. Kroll	Assistant Inspector General for Policy, Planning and Resources.
Maureen T. Regan	Counselor to the Inspector General.
Environmental Protection Agency	
James O. Rauch	Deputy Assistant Inspector General for Audit.
Federal Emergency Management Agency	
William R. Partridge	Deputy Inspector General.
General Services Administration	
Edward F. Hefferon	Deputy Inspector General.
Joel S. Gallay	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
Wiliam E. Whyte, Jr.	Assistant Inspector General for Auditing.
Lawrence J. Dempsey	Assistant Inspector General for Quality Management.
National Aeronautics and Space Administration	
Lewis D. Rinker	Deputy Inspector General.
William D. Hager	Assistant Inspector General for Investigators.
Office of Personnel Management	
Harvey D. Thorp	Assistant Inspector General for Audits.
Railroad Retirement Board	
William J. Doyle III	Inspector General.
Charles R. Sekerak	Assistant Inspector General for Investigations.
Small Business Administration	
Robert W. Gardner	Deputy Inspector General.
Stephen N. Marcia	Assistant Inspector General for Investigations.
Daniel B. Peyser	Counsel to the Inspector General.
Peter L. McClintock	Assistant Inspector General for Auditing.
United States Information Agency	
J. Richard Berman	Assistant Inspector General for Audit.

Dated: September 4, 1992.

Julian W. De La Rosa,

Inspector General, Department of Labor, and Vice-Chair, PCIE.

[FR Doc. 92–21965 Filed 9–10–92; 8:45 am]

BILLING CODE 4510–21–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

Wyoming:
WY91-7 (Sept. 11, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA91-4 (Feb. 22, 1991)..... p. All.
Maryland:
MD91-11 (Feb. 22, 1991)..... p. All.
New York:
NY91-7 (Feb. 22, 1991)..... p. 837, pp. 838-856b.
Pennsylvania:
PA91-1 (Feb. 22, 1991)..... p. 953, pp. 954, 956, p. 957.
PA91-4 (Feb. 22, 1991)..... p. 985, pp. 986, 987.
PA91-10 (Feb. 22, 1991)..... p. 1047, p. 1048.
PA91-12 (Feb. 22, 1991)..... p. 1057, pp. 1058-1059.
PA91-14 (Feb. 22, 1991)..... p. 1063, pp. 1065, 1066, p. 1067.

Volume II

Illinois:
IL91-2 (Feb. 22, 1991)..... p. 97, p. 100.
IL91-3 (Feb. 22, 1991)..... p. 115, p. 116.
IN91-4 (Feb. 22, 1991)..... p. 121, p. 122.
LA91-5 (Feb. 22, 1991)..... p. 127, p. 128.
MO91-6 (Feb. 22, 1991)..... p. 133, p. 134.
MO91-7 (Feb. 22, 1991)..... p. 137, p. 138.
MO91-12 (Feb. 22, 1991)..... p. 171, pp. 172-173.
IL91-13 (Feb. 22, 1991)..... p. 183, p. 186.
IL91-14 (Feb. 22, 1991)..... p. 195, pp. 196, 198.
IL91-15 (Feb. 22, 1991)..... p. 205, p. 208.
IL91-16 (Feb. 22, 1991)..... p. 215, p. 216.
Kansas:
KS91-7 (Feb. 22, 1991)..... p. All.
KS91-9 (Feb. 22, 1991)..... p. All.
KS91-12 (Feb. 22, 1991)..... p. All.
KS91-14 (Feb. 22, 1991)..... p. All.
Michigan:
MI91-12 (Feb. 22, 1991)..... p. All.
Nebraska:
NE91-3 (Feb. 22, 1991)..... p. All.
NE91-9 (Feb. 22, 1991)..... p. All.
NE91-10 (Feb. 22, 1991)..... p. All.
NE91-11 (Feb. 22, 1991)..... p. All.

Volume III

Alaska:
AK91-1 (Feb. 22, 1991)..... p. All.
California:
CA91-2 (Feb. 22, 1991)..... p. All.
CA91-4 (Feb. 22, 1991)..... p. All.
Idaho:
ID91-1 (Feb. 22, 1991)..... p. All.
North Dakota:
ND91-2 (Feb. 22, 1991)..... p. 285, p. 287.
Utah:
UT91-1 (Feb. 22, 1991)..... p. All.
Washington:
WA91-2 (Feb. 22, 1991)..... p. All.
WA91-7 (Feb. 22, 1991)..... p. All.
WA91-10 (Feb. 22, 1991)..... p. All.
WA91-11 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 4th day of September 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-21841 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-27,238]

Bates Fabrics, Incorporated; Lewiston, ME; Affirmative Determination Regarding Application for Reconsideration

On August 7, 1992, the New England Regional Joint Board of the Amalgamated Clothing and Textile Workers Union (ACTWU) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 8, 1992 and published in the **Federal Register** on July 28, 1992 (57 FR 33367).

The union claims that the Department's survey was inadequate and submitted a list of customers who are importing bedspreads.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of August 1992.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-21903 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,455]

Noble Drilling (U.S.), Inc., Lafayette, LA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992, on behalf of workers at Noble Drilling (U.S.), Lafayette, Louisiana.

An active certification covering the petitioning group of workers remains in effect (TA-W-27,074F). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-21902 Filed 9-10-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT

Meeting

AGENCY: National Commission on Financial Institution Reform, Recovery, and Enforcement.

Time and Date: 1:30 p.m. to 4:30 p.m., Monday, September 21 and 9 a.m. to 3:30 p.m., Tuesday, September 22, 1992.

Place: Almas Temple, 1315 K. Street, NW, Washington, DC

Status: A portion of this meeting will be open to the public. Following the public meeting, the Commission will conduct a meeting which will be closed to the public pursuant to 5 U.S.C. 552b(c)(6), Government in the Sunshine Act.

Matters to be Considered: The Commission has invited Congressional sponsors of the Act creating the Commission and a representative from the executive branch to make presentations concerning the reasons for the Commission's creation and goals the Commission should accomplish. This portion of the meeting shall be open to the public.

Following the public portion of this meeting, the Commission shall consider and discuss, in a closed session, proposals concerning such additional staff and consulting arrangements as may be necessary to implement the Commission's work plan. Because consideration of these staffing proposals in relation to the Commission's work plan will require discussion of confidential information concerning the qualifications of individual candidates, personal financial information such as salaries or salary requirements and other personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, this portion of the meting will be closed to the public. These matters are within exemption (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

In addition, the Commission will consider any other such matters as may properly come before it. Due to limited seating, persons wishing to attend the public portion of the meeting should call the below-listed contact person in advance.

Contact Persons for More Information: Larry G. Hicks (202) 632-1556, or Linda R. Johnson (202) 632-1556,

Larry G. Hicks,

Director of Administration.

[FR Doc. 92-21897 Filed 9-10-92; 8:45 am]

BILLING CODE 6820-PD-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a final revised "Important Notice" which advises universities of revisions to the "Grants for Research and Education in Science and Engineering" (GRESE) brochure proposed in the Federal Register, Volume 57, No. 102, pages 22257-22258 on May 27, 1992.

Effective Date: October 1, 1992. For Further Information Contact: Herman G. Fleming, Division of Human Resources Management, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 357-7335.

Title: Important Notice To Presidents Of Universities And colleges And Heads Of Other National Science Foundation Grantee Organizations.

Affected Public: Any institution/individual submitting a proposal to the National Science Foundation.

Respondents/Burden Hours: NSF expects to receive over 38,000 proposals during FY 1993. It is estimated that 120 hours are required to submit a proposal. While some additional information is being requested, some information currently collected will now no longer be required. Therefore, this information collection will not affect the total amount of time required to submit a proposal.

SUPPLEMENTARY INFORMATION:

A. Background

The National Science Foundation (NSF) issued a public notice on May 27, 1992, (57 FR 22257). This notice announced the "Draft Important Notice" which advised universities of revisions to the Grants for Research and Education in Science and Engineering (GRESE). NSF received 8 public comments, as well as comments from OMB. Two of those comments were from one institution. Comments regarding the encouragement of longer duration awards were positive. Most of the responses contained some negative comments. Some very positive comments were made regarding the 15-page limit. The comments have been considered in the preparation of the final Important Notice and revision of the GRESE. Significant comments received are discussed in detail below.

B. Public Notice

NSF Revised Proposal Guidelines and Forms.

NSF is revising the Grants for Research and Education in Science and Engineering (GRESE) brochure and related proposal and grant forms, effective October 1, 1992. Major changes will be as follows:

(1) Increased emphasis on the importance of conformance to the proposal preparation guidelines provided in the GRESE. Proposals not conforming to the guidelines will be returned to the sender unless prior approval to depart from them has been obtained from the appropriate NSF Assistant Director, or Division Director if approval authority has been delegated. In particular, the fifteen-page limit on the text of the proposal Project Description applies unless alternative or additional guidelines are provided in a specific program announcement or solicitation. The Project Description includes results of prior NSF support,

which is limited to five pages of the Project Description.

(2) Encouragement of submission of longer duration grant proposals. The GRESE now indicates a "norm" of three years for grant award durations.

(3) A requirement that biographical sketches be limited to 2 pages per investigator.

(4) Revised provisions on "group" proposals and equipment proposals.

(5) Clarification of the significance of the signature requirements in various grant-related forms for Principal Investigators, Co-Principal Investigators and Authorized Organizational Representatives.

(6) NSF has revised the proposal cover sheet and the final report Form 98A.

(7) NSF is now requiring a new annual progress report form for all ongoing NSF grants, which includes certification language.

(8) Clarification that bioengineering research, with diagnosis or treatment-related goals, that applies engineering principles to problems in biology and medicine while advancing engineering knowledge is eligible for support. Bioengineering research to aid persons with disabilities is also eligible.

(9) The requirement for a human resources statement for renewal proposals has been clarified to be applicable to academic institutions only.

(10) Various editorial and updating changes, consistent with changes in NSF programs and organization.

The principal thrust of these changes is to lessen the burden on proposers and reviewers by reducing proposal length and increasing the average award duration. At the same time, applicants and grantees are reminded that in signing proposals and other grant-related documents they are certifying as to the truthfulness of the statements and information submitted. The new proposals cover sheet includes certifications to this effect on pages 1 and 2 of the cover sheet, which must be completed by both the Principal Investigator(s) and by the Authorized Institutional Representative. The new Progress Report Form includes a similar certification by the Principal Investigator(s). All progress reports must include this form with the Investigator's signature for the certification on the form. Progress reports submitted electronically must include the text of the certification. An electronic version of the form, including the required certification, will be available on STIS. The forms in the GRESE must be used for all proposals and reports submitted on or after October 1, 1992.

The majority of comments NSF received regarding the revisions relate to the 15-page limit for the Project Description in note 1 above. A summary of the public comments received is given below along with NSF's response.

Public Comment. The University supports the Foundation's encouragement of proposals with longer durations of 3 to 5 years. Benefits to the University and the Foundation will be substantial and promote stability in the research activities of principal investigators.

Public Comment. The encouragement of longer duration grants will severely limit the number of new awards that will be made in non-research intensive programs such as programs in the EPSCOR states.

NSF Response. The NSF Director has asked each Directorate to develop plans to establish a "norm" of three years duration for research project support. Increasing the amount of time investigators have to carry out their research programs also helps to limit the number of proposals out for review at any given time. NSF is very concerned about providing opportunities in EPSCOR states and to other underrepresented scientists and engineers and will continue to place importance on the merits of these programs. Longer duration awards will not affect the number or size of awards under the EPSCOR program. The section in GRESE clarifies the Foundation's encouragement of proposals with duration of 3 to 5 years and communicates this objective to the research community.

(The following comments are grouped because each of the comments relates to the 15 page limitation.)

Public Comments. Limiting the page length of the Project Description does not provide adequate length for detail. Additional hours of editing increase the burden on Principal Investigators to condense the material to a shorter format. One comment also indicated that it may be more difficult for reviewers to determine if a proposal merits funding if it lacks sufficient detail. Another comment indicated that the quality of NSF proposals would be enhanced if limited to 15 pages, and would contain "digested and more precise views."

Public Comments. Inclusion of the results from prior support in the Project Description may use up too much of the allotted 15 pages for Principal Investigators who have received NSF funding previously. Researchers who have received previous funding from NSF who must include pages of material regarding results from prior support may be at a disadvantage. Another comment was that inclusion of results from prior support in the project description may put the less-experienced individual at a disadvantage because he/she has little or no material to write on this subject.

NSF Response. NSF has considered both comments and considers inclusion of prior results to be equitable to both new and experienced researchers. First, an experienced Principal Investigator will have a minimum of 10 pages to develop his/her proposal. Review will include information relating to the results of prior support, limited to five pages, upon which decisions of new support should be based. Second, a new Principal Investigator with no previous results to include in the project description has the full 15 pages to develop the proposal. This would allow for equitable review of information provided by the experienced Principal Investigator regarding prior support, and give a new Principal Investigator more pages to develop the proposal. Third, there is considerable support in the research community for shorter research proposals. This helps reduce the amount of paper flowing through sponsored research offices and NSF. Suggestions for implementing page limit changes and longer duration awards were the result of the Merit Review Task Force Report (NSF 90–113) and recommendations by a team of Division Directors at the request of the NSF Director.

Public Comment. One university's comments contained a suggestion that NSF provide a more definitive statement inviting grant applicants to provide names of suggested reviewers.

NSF Response. NSF has developed a more definitive statement in this regard. It will be included in the revised GRESE under Part One following the section titled "Information about Principal Investigators/Project Directors (NSF Form 1225)".

Public Comment: One comment recommended that the length of material in the Project Description devoted to prior results of research be restricted to a maximum number of pages.

NSF Response. NSF agrees that this may be an appropriate response to the concerns expressed about the overall page limit for the Project Description. The results from prior support will be limited to a maximum of five pages.

Public Comment. One comment suggested that NSF change the Principal Investigator's certification language from "true and complete" to "true and correct". This commentator wrote that it would be difficult to certify to the "completeness" of a proposal given the 15 page limitation.

NSF Response. The interpretation of the word "complete" in the certification means that no material omissions affecting the truthfulness of the proposal have been made. Consistent with other agencies' certification language and recommendations from the Office of Inspector General, the language will remain "true and complete". The Principal Investigator has an affirmative duty to include information which otherwise could be viewed as omission of a material fact which could impact the review of the proposal.

Public Comment. One comment suggested that use of a two-page cover sheet increases the risk of incomplete cover sheets. It also was suggested that NSF adopt a one-page cover sheet like the current version of the PHS Form which uses a "checklist" for representations and certifications.

NSF Response. NSF has considered redesign of the proposal cover sheet to a one-page format. However, the information necessary for proposal processing cannot be condensed to one page. The second page or "checklist" of the PHS Form is actually the second page of material necessary for proposal submission. The submission is incomplete without the certifications and representations. The NSF cover sheet will now be used to accommodate the full text of Lobbying Certification for awards over $100,000. The two-page format accommodates this change, as well as certifications required by other federal statutes and regulations. NSF is concerned that a significant number of certificates have been faxed to the Foundation at the time of award, in lieu of being attached to the proposal at the time of submission. Inclusion of Lobbying and other required certifications as a part of the proposal should assure that all Institutions and Principal Investigator certificates have been signed prior to award.

Revisions Effective Date. A revision to GRESE reflecting these changes will be effective for proposals submitted on or after October 1, 1992. The NSF Grant Policy Manual will be revised to reflect these changes. The full text of the GRESE Revision is available upon request. These changes will be incorporated into the next revision of "Grants for Research and Education in Science and Engineering" (GRESE).

Dated: September 4, 1992.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 92-21848 Filed 9-10-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemical and Thermal Systems; Meetings

In accordance with the Federal Advisory Committee Act [Pub. L. 92-463, as amended], the National Science Foundation [NSF] announces the following meetings.

Date & Time: September 22, 1992; 8:30 a.m. to 5 p.m.

Place: Room 502, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC.

Contact Person: Drs. Maria K. Burka and Farley Fisher, Program Directors, Division of Chemical and Thermal Systems, room 1115, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: [202] 357-9606.

Date & Time: September 29, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500C, National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC.

Contact Person: Drs. Michael Roco and Stephen Traugott, Program Directors, Division of Chemical and Thermal Systems, room 1115, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: [202] 357-9606.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 4, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-21847 Filed 9-10-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-70]

Environmental Assessment and Finding of No Significant Environmental Impact Regarding Proposed Renewal of Facility License No. TR-1, General Electric Co.

The U.S. Nuclear Regulatory Commission [NRC] is considering issuance of an amendment to Facility License No. TR-1 for the General Electric [the licensee] Test Reactor located on the Vallecitos Nuclear Center in Alemeda County, California.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment is written in connection with the proposed renewal date of January 26, 2016, for the facility license of the General Electric Test Reactor [GETR] in Alemeda County, California, in response to a timely application from the licensee dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. The proposed action would authorize continued possession, but not operation, of the facility.

Need for Proposed Action

The license for the facility was due to expire on October 1, 1992. The proposed action is required to authorize continued possession, but not operation of the facility, so that the licensee can complete their decommissioning plan, and implement decommissioning of the reactor facility.

Alternatives to the Proposed Action

An alternative to the proposed action that was considered was not renewing the license. This alternative would have led to possession of the facility and radioactive material without authorization by law. This alternative did not provide an acceptable way of decommissioning the facility in a controlled, coordinated manner. Another alternative, that was considered, was to renew the license for a lesser period of time; but this would also not have allowed for a controlled, coordinated decommissioning effort considering the other nuclear facilities on the Vallecitos Nuclear Center site, and would require license renewals until decommissioning is completed.

Environmental Impact of the Proposed Action

The reactor is defueled and all special nuclear material has been shipped from the facility. The only remaining radioactivity at the facility is activated components and fission product contamination. There is no potential for generation of further radioactive materials. The extension of the facility possession only license to January 26, 2016, gives the licensee the opportunity to consider their decommissioning plans in an integrated, well controlled manner for all applicable nuclear facilities at the Vallecitos Nuclear Center site. This time to develop integrated site-wide decommissioning plans should lessen the environmental impact, in that, radioactive materials will continue to be depleted by the radioactive decay process and the licensee should have an

opportunity to better plan and conduct the decommissioning activities thus further reducing the environmental impact.

Alternatives Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing Environmental Assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license renewal application dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 4th day of September 1992.

For The Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21923 Filed 9-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Energy Operations, Inc., Arkansas Nuclear One, Unit 2; Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations Correction

In notice document 92-21129 beginning on page 40205, in the issue of Wednesday, September 2, 1992, make the following correction:

In the third column on page 40210, the second line of the heading which reads "313, Arkansas Nuclear One, Unit 1" should be corrected to read "368, Arkansas Nuclear One, Unit 2."

Dated at Rockville, Maryland, this 4th day of September 1992.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-21924 Filed 9-10-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Form RI 25-2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25-2, Application for Minimum Annuity, is used by the survivors of retired Federal employees to apply to have their survivor annuities increased to the minimum amount, as provided under the Minimum Annuity provisions of Public Law 93-273. This provision applies only to survivors whose annuities began before February 27, 1986.

Approximately 30 RI 25-2 forms are completed annually. The form requires approximately 15 minutes to complete. The annual burden is 8 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received on or before October 11, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-21861 Filed 9-10-92; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

[Resolution No. 92-4]

Resolution of the Governors; Adjustment of Preferred Rates

Resolved:

The Postal Service Appropriations Act for Fiscal Year 1992, contained instructions regarding the recovery of the reductions in the amount of appropriations to the Postal Service to support preferred rates for eligible mail, enabling the Postal Service to increase the rates in Fiscal Year 1993 for reduced-rate third-class pieces other than letter shape so as to recover as nearly as possible the reduction in the amount of subsidy for such mail resulting from the enactment of section 2401(c)(ii) of title 39, United States Code. The Postal Service Appropriations Act for Fiscal Year 1993, passed by the House and reported by the Senate Committee on Appropriations, affirms that authority. Accordingly, pursuant to section 3627 of title 39, United States Code, the Governors have determined that, effective at 12:01 a.m. on Sunday, October 4, 1992, the preferred rates will be adjusted to the levels shown in the attached schedule.

The foregoing resolution was adopted by the Governors on September 1, 1992.

David F. Harris,

Secretary.

RATE SCHEDULE 302—THIRD-CLASS MAIL NONPROFIT BULK [1]

	Piece rate (cents)	Pound rate (cents)
Non-Letters Size:		
Piece Rate [6]	16.4	
Discounts (Per Piece):		
Destination Entry		
BMC	1.2	
SCF	1.7	
Delivery Office [2]	2.2	
Presort Level:		
3- and 5-Digit	1.4	
Carrier Route	4.5	
125-Piece Walk-Sequence	4.7	
Saturation	5.2	
Pound Rate [6]		
Pound Rates Plus Per Piece Rate	7.1	44.6
Discounts:		
Destination Entry (Per Pound)		
BMC		5.8
SCF		8.1
Delivery Office [2]		10.4
Presort Level (Per Piece):		
3- and 5-Digit	1.4	
Carrier Route	4.5	
125-Piece Walk-Sequence	4.7	
Saturation	5.2	

Notes:

[1] A fee of $75.00 must be paid once each 12-month period for each bulk mailing permit.

[2] Applies only to carrier route presort, 125-piece walk-sequence and saturation mail.
[3] For letter size pieces meeting applicable Postal Service regulations.
[4] Among ZIP+4 and barcode discounts, only one discount may be applied.
[5] Deducted from the otherwise applicable 3- and 5-digit rate.
[6] Mailer pays either the piece of the pound rate, whichever is higher.

[FR Doc. 92-21878 Filed 9-10-92; 8:45 am]
BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

September 4, 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:

Berlitz International, Inc.
Common Stock, $.01 Par Value (File No. 7-9043)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7-9044)
Cone Mills Corp.
Common Stock, $.01 Par Value (File No. 7-9045)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7-9046)
Sears Roebuck Co.
Depository Shares, No Par Value (File No. 7-9047)
Westinghouse Electric
Depository Shares, $1.00 Par Value, Rep. ¼ Sh. Series B Conv. Pfd. (File No. 7-9048)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transactions reporting system.

Interested persons are invited to submit on or before September 28, 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. 92-21859 Filed 9-10-92; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Inc.

September 4, 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:

Abex, Inc.
Common Stock, $0.01 Par Value (File No. 7-8965)
American Medical Response, Inc.
Common Stock, $0.01 Par Value (File No. 7-8966)
American Strategic Income Portfolio, Inc. II
Common Stock, $0.01 Par Value (File No. 7-8967)
Applied Power, Inc.
Class A Common Stock, $0.20 Par Value (File No. 7-8968)
Authentic Fitness Corporation
Common Stock, $0.01 Par Value (File No. 7-8969)
Automated Security (Holdings), PLC
American Depository Shares (rep. 2 Ord. Shares of 10 p each) (File No. 7-8970)
Banco Comercial Portugues S.A.
American Depository Shares (File No. 7-8971)
Bandag, Inc.
Class A Common Stock, $1.00 Par Value (File No. 7-8972)
BankAmerica Corp.
Depository Shares (rep. 1/20 shares of 8.16% Cum. Pfd. Stock, Ser. L) (File No. 7-8973)
Boston Edison Co.
Depository Shares (rep. 1/4 Share Cum. Pfd. Stock, 8 ¼% Ser., $100.00 Par Value (File No. 7-8974)
Bradless, Inc.
Common Stock, $0.01 Par Value (File No. 7-8975)
British Telecommunications Plc
Second Interim American Depository Receipts (File No. 7-8976)
Broad, Inc.
9¼% Pfd. Ser. B. (Cum.), No Par Value (File No. 7-8977)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7-8978)
Chase Manhattan Corp.
8½% Ser. K, No Par Value (File No. 7-8979)
China Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-8980)
Chiquita Brands International, Inc.
Common Stock, $0.33 Par Value (File No. 7-8981)
Cone Mills Corp.
Common Stock, $0.01 Par Value (File No. 7-8982)
Delta Air Lines, Inc.
Depository Shares (Rep. 1/1000 share of Ser. C Conv. Pfd. Stock, $1.00 Par Value (File No. 7-8983)
Dr. Pepper/Seven-Up Companies
Common Stock, $0.01 Par Value (File No. 7-8984)
Emerging Markets Telecommunications Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-8985)
Enron Liquids Pipeline, L.P.
Common Units, (Rep. L.P. Interests) (File No. 7-8986)
Enterprises Oil Plc
American Depository Shares, Ser. A (rep. 1 Cum. Dollar Pref. Share Ser. A) (File No. 7-8987)
Equitable Companies, Inc.
Common Stock, $0.01 Par Value (File No. 7-8988)
First Republic Bancorp, Inc.
Common Stock, $0.01 Par Value (File No. 7-8989)
Fleet Mortgage Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-8990)
Freeport McMoran Copper & Gold, Inc.
Depository Shares (rep. 2.941 shares of 7% Conv. Exch. Spc. Pref. Stock, $0.10 Par Value (File No. 7-8991)
General Instrument Corp.
Common Stock, $0.01 Par Value (File No. 7-8992)
General Motors Corp.
Depository Shares (rep. 1/4 share of Ser. D 7.92% Pref. Stock, $0.10 Par Value (File No. 7-8993)
Georgia Power Co.
$1.9875 Class A Pfd. (File No. 7-8994)
Greater China Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-8995)
GTECH Holdings Corp.
Common Stock, $0.01 Par Value (File No. 7-8996)
Hafslund Nycomed AS
American Depository Shares (rep. 1 Class B share, Nominal Value NOK 5 each) (File No. 7-8997)
Hilb, Rogal & Hamilton Co.
Common Stock, No Par Value (File

No. 7–8998)
Hyperion 1999 Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–8999)
Indresco, Inc.
Common Stock, $0.25 Par Value (File No. 7–9000)
Jardine Fleming China Region Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–9001)
Latin American Dollar Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–9002)
Latin American Discovery Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–9003)
Long Island Lighting Co.
7.95% Ser. AA Cum. Pfd. $25.00 Par Value (File No. 7–9004)
Managed Municipals Portfolio Inc.
Common Stock, $0.001 Par Value (File No. 7–9005)
MuniYield New York Insured Fund II, Inc.
Common Stock, $0.10 Par Value (File No. 7–9006)
MuniYield Quality Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7–9007)
Mitchell Energy & Development Corp.
Class A Common Stock, $0.10 Par Value (File No. 7–9008)
Mitchell Energy & Development Corp.
Class B Common Stock, $0.10 Par Value (File No. 7–9009)
North American Mortgage Co.
Common Stock, $0.01 Par Value (File No. 7–9010)
Nuveen Insured California Select Tax-Free Income Portfolio
Shares of Beneficial Interest, $0.01 Par Value (File No. 7–9011)
Nuveen Insured New York Select Tax-Free Income Portfolio
Shares of Beneficial Interest $0.01 Par Value (File No. 7–9012)
Nuveen Premium Income Municipal Fund, 2 Inc.
Shares of Beneficial Interest, $0.01 Par Value (File No. 7–9013)
Nuveen Select Tax-Free Income Portfolio 3
Shares of Beneficial Interest, $0.10 Par Value (File No. 7–9014)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7–9015)
Offshore Pipelines, Inc.
Cum. Conv. Exch. Pfd. $0.01 Par Value (File No. 7–9016)
Omega Healthcare Investors, Inc.
Common Stock, $0.10 Par Value (File No. 7–9017)
Patriot Global Dividend Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7–9018)
Prime Hospitality Corp.
Common Stock, $0.01 Par Value (File No. 7–9019)
Primercia Corp.
Depositary Shares (Rep. 1/01 share of 8.125% Cum. Pfd. Stock, Ser. A, $1.00 Par Value (File No. 7–9020)
Putnam Tax-Free Health Care Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7–9021)
Real Estate Investment of California
Common Stock, No Par Value (File No. 7–9022)
Revco D.S., Inc.
Common Stock, $0.01 Par Value (File No. 7–9023)
Riverwood International Corp.
Common Stock, $0.01 Par Value (File No. 7–9024)
Royal Appliance Mfg. Co.
Common Stock, No Par Value (File No. 7–9025)
Saatchi & Saatchi Co. Plc
American Depositary Shares (rep. 3 Ord. shares of 10p each) (File No. 7–9026)
Sea Container Ltd.
Class A Common Stock, $0.01 Par Value (File No. 7–9027)
Sunrise Medical, Inc.
Common Stock, $1.00 Par Value (File No. 7–9028)
Tadiran Ltd.
Ordinary Shares (NIS 6.2 Par Value (File No. 7–9029)
Travelers Corp.
Depository Shares (Rep. 1/2 interest in a share of 9 1/4% Ser. B Pref. Stock) (File No. 7–9030)
Ultramar Corp.
Common Stock, $0.01 Par Value (File No. 7–9031)
Washington Energy Co.
Common Stock, $5.00 Par Value (File No. 7–9032)
Wellcome Plc
American Depository Shares (Rep. right to receive 1 Ord. Share of 25p each) (File No. 7–9033)
Westmoreland Coal Co.
Common Stock, $2.50 Par Value (File No. 7–9034)
Westmoreland Coal Co.
Depositary Shares (Rep. 1/4 share Ser. A Conv. Exch. Pfd., No Par Value (File No. 7–9035)
Duff & Phelps Utilities Income, Inc.
Common Stock, $.01 Par Value (File No. 7–9036)
Homeplex Mortgage Investments Corp.
Common Stock, $.01 Par Value (File No. 7–9037)
Jacobs Energy Group
Common Stock, $1.00 Par Value (File No. 7–9038)
Silicon Graphics Inc.
Common Stock, $.001 Par Value (File No. 7–9039)
T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7–9040)
United States Surgical Corp.
Common Stock, $.10 Par Value (File No. 7–9041)
Davstar Industries, Ltd.
Class A Common Stock, No Par Value (File No. 7–9042)

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 September 28, 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. 92–21856 Filed 9–10–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange; Inc.

September 4, 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:

Society Corporation
Common Stock, $1.00 Par Value (File No. 7–9053)
Citizens First Bancorp, Inc.
Common Stock Subscription Rights, No Par Value (File No. 7–9054)
Interco Incorporated
Common Stock, No Par Value (File No. 7–9055)
Prime Hospitality Corp.
Common Stock, $.01 Par Value (File No. 7–9056)
Westpace Banking Corporation
American Depositary Share Subscription Rights, No Par Value (File No. 7–9057)

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 September 28, 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 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. 92-21857 Filed 9-10-92; 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.

September 4, 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:

Discount Autoparts, Inc.
Common Stock, $.01 Par Value (File No. 7-9058)
Fleet Mortgage Group, Inc.
Common Stock, $.01 Par Value (File No. 7-9059)
Gitano Group, Inc.
Common Stock, $.10 Par Value (File No. 7-9060)
Gtech Holdings Corp.
Common Stock, $.01 Par Value (File No. 7-9061)
International Murex Technologies Corp.
Common Stock, No Par Value (File No. 7-9062)
Japan Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-9063)
LTC Properties, Inc.
Common Stock, $0.01 Par Value (File No. 7-9064)
Medchem Products, Inc.
Common Stock, $.01 Par Value (File No. 7-9065)
Sulcus Computer Corp.
Common Stock, No Par Value (File No. 7-9066)
United Healthcare Corp.
Common Stock, $.01 Par Value (File No. 7-9067)

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 September 28, 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. 92-21860 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-10-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 4, 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:

Bank of Boston Corporation
Depository Shares Cum. Pfd. Stock Series E (File No. 7-9049)
Cousins Properties, Inc.
Common Stock, $1.00 Par Value (File No. 7-9050)
Society Corporation
Common Stock, $1.00 Par Value (File No. 7-9051)
Paxar Corporation
Common Stock, $0.01 Par Value (File No. 7-9052)

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 September 28, 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. 92-21858 Filed 9-10-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1695]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Bureau of Diplomatic Security, Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: Operation of a motor vehicle in the United States by foreign diplomatic personnel is a benefit under the Foreign Missions Act. Administration of this benefit requires the Department of State to issue a driver's license to each member of the foreign missions community who enjoys diplomatic immunities, and to dependents of such members, who are eligible to operate a motor vehicle in the United States. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Foreign Missions.

Title of information collection—United States Department of State Driver License Application.
Frequency—On occasion.
Form number—DSP–103.
Respondents—Foreign government representatives and their dependents.
Estimated number of respondents—10,800.
Average hours per response—30 minutes.
Total estimated burden hours—5,400.

Section 3504(h) of P.L. 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647–3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395–7340.

Dated: September 1, 1992.

Clark M. Dittmer,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92–21938 Filed 9–10–92; 8:45 am]

BILLING CODE 4710–43–M

[Public Notice 1696]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Bureau of Diplomatic Security, Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: To obtain a United States passport, a travel document attesting to one's identity and U.S. citizenship, a U.S. national must complete a passport application (22 U.S.C. 213). The application is retained in the files of the Department of State and is consulted when a passport has been lost, in citizenship claims, as evidence in the prosecution of individuals making false statements, and to support a derivative claim to citizenship made by an applicant's children. The following summarizes the information collection proposal submitted to OMB:

Type of request—Extension.
Originating office—Bureau of Consular Affairs.
Title of information collection—Application for Passport by Mail.
Frequency—On occasion.
Form number—DSP–82.
Respondents—Applicants for U.S. passports.
Estimated number of respondents—2,000,000.
Average hours per response—5 minutes.
Total estimated burden hours—166,666.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647–3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395–7340.

Dated: September 1, 1992.

Clark M. Dittmer,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 92–21939 Filed 9–10–92; 8:45 am]

BILLING CODE 4710–43–M

[Public Notice 1691]

Director General of the Foreign Service and Director of Personnel

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register.

Martin Prochnik, Director for Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs
Bowman H. Miller, Office Director for Office of Analysis for Western Europe and Canada, Bureau of Intelligence and Research
T. Michael Peay, Assistant Legal Adviser for Inter-American Affairs, Office of the Legal Adviser
Arthur L. Freeman, Director for Interagency Affairs Staff, Bureau of Diplomatic Security
Marijane Eastman Peplow, Public Member.

Dated: August 6, 1992.

Larry C. Williamson,

Acting Director General of the Foreign Service and Director of Personnel.

[FR Doc. 92–21933 Filed 9–10–92; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Conference on Civil Aviation's Transition to the Use of Satellite Based Navigation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: The FAA is issuing this notice to advise the public of a conference on the RTCA Task Force Report on GNSS Transition and Implementation Strategy.

DATES: The conference will be held on Wednesday, October 14, 1992.

ADDRESSES: The conference will be held at the Ramada Renaissance Techworld Hotel, 999 9th Street, NW., Washington, DC.

FOR ADDITIONAL INFORMATION OR TO RECEIVE A REGISTRATION FORM: Call (301) 949–7477 or Fax inquiries to (301) 949–5154, to the attention of Bernadette Macias.

SUPPLEMENTARY INFORMATION: At the International Civil Aviation Organization 10th Air Navigation Conference last fall, the international aviation community agreed to adopt the Global Navigation System (GNSS) as a key element of the Future Air Navigation System. Implementation of GNSS will make possible significant enhancements in civil aviation capacity, efficiency and safety.

Following the ICAO meeting, the FAA Administrator noted strong aviation community support for rapid implementation of GNSS and asked RTCA to develop community consensus regarding GNSS implementation in the United States. RTCA formed the Task Force and has been at work addressing operational applications, system requirements, transition and institutional issues, and the future direction of satellite navigation technology developments. During the October 14 conference, RTCA will present the Task Force report for review and discussion, and FAA will offer initial comment on the recommendations. Copies of the Task Force report will be provided at the conference. A detailed agenda and registration form will be available in September.

Issued in Washington, DC, on August 21, 1992.

Martin T. Pozesky,

Associate Administrator for System Engineering and Development.

[FR Doc. 92–21968 Filed 9–10–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; SR 20, Deception Pass State Park to Gibraltar Road, Skagit County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of notice of intent, FR document 92–714.

SUMMARY: The FHWA is issuing this notice to rescind the previous Notice of Intent issued on January 13, 1992, to prepare an environmental impact statement (EIS) for the proposed highway project in Skagit County,Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (206) 753–2120; E.R. Burch, State Design Engineer, Washington State Department of Transportation, Tranportation Building, Olympia, Washington, 98504, Telephone: (206) 753–6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15325 SE 30th Place, Bellevue, Washington, 98007–6538, Telephone (206) 764–4020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), issued a Notice of Intent on January 13, 1992 to prepare an EIS on a proposal to address safety issues within a four mile portion of SR 20. Due to lack of funding, the scope of the project has been reduced. The minor improvements now proposed will be on the existing alignment and will not require preparation of an EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Issued on: August 25, 1992.

Sharon R. Price

Area Engineer, Olympia, Washington.

[FR Doc. 92–21961 Filed 9–10–92; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: SR 525, SR 99 to SR 526, Snohomish County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to revise the notice issued in May of 1992 to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Snohomish County, Washington. This revised notice is being issued to more completely describe the project, and to include the City of Everett's Paine Field Boulevard project, which will be addressed in the same EIS.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (206) 753–9413; E.R. Burch, State Design Engineer, Washington State Department of Transportation, Transportation Building, Olympia, Washington, 98504, Telephone: (206) 753–6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15700 Dayton Avenue North, Seattle, Washington, 98133–9710, Telephone: (206) 440–4691.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and the City of Everett, will prepare an EIS on a proposal to improve 3.7 miles of SR 525 from SR 99 to SR 526, and to construct on new alignment the proposed 1.5 mile Paine Field Boulevard, which would carry through traffic from a point north of Harbour Pointe Boulevard North to SR 526. The proposed Paine Field Boulevard is being developed by the City of Everett. These improvements are needed to enhance safety and traffic circulation for general purpose and HOV traffic, and to add the capacity necessary to serve the increased traffic volume generated by development which has already occurred and development which is planned in the area. The improvements to SR 525 would include a new interchange at the junction of SR 525 and SR 99, improvements to several major intersections along the route, and construction of a new interchange or intersection at the junction of the proposed Paine Field Boulevard. The action alternatives for SR 525 south of the proposed Paine Field Boulevard will examine options for widening the existing two-lane roadway along its existing alignment to as many as three lanes in each direction. Provisions for adding HOV lanes, bikeways, planting strips, sidewalks, and widening shoulders will also be investigated. The proposed 1.5 mile Paine Field Boulevard will be constructed on new alignment between the SR 525 intersection with Harbour Pointe Boulevard North to SR 526 within a corridor bounded on the east by Paine Field and on the west by a residential area. The alternative of improving the existing alignment of SR 525 between Harbour Pointe Boulevard and SR 526 will also be investigated. Studies in this EIS will analyze options for constructing a roadway of up to three lanes in each direction, along with provisions for HOV lanes, bicycle and pedestrian facilities, and landscaping. The EIS would also analyze a no-action alternative. Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal State, and local agencies, as well as citizens and organizations that have expressed an interest in this project. A series of meetings with the public, interested community groups, and governmental agencies will be held beginning in the summer of 1992. In addition, advertisements offering interested persons the opportunity to attend and offer comments at a public hearing will be published. Public notice of actions related to the proposal that identify the date, time, place of meeting, and note the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on August 28, 1992.

Sharon R. Price,

Area Engineer, Olympia, Washington.

[FR Doc. 92–21945 Filed 9–10–92; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Emergency Order No. 17, Notice No. 1]

Owners of Railroad Tank Cars; Emergency Order Requiring Inspection and Repair of Stub Sill Tank Cars

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring compliance with a program of priority-based inspections, and repairs as necessary, of the stub sill tank car fleet.

Authority

Authority to enforce Federal railroad safety laws, including laws pertaining to the transportation of hazardous materials by railroad, has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads, shippers and owners of tank cars are subject to FRA's safety jurisdiction under the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 438, and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. 1804. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury to persons." 45 U.S.C. 432(a). These orders may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation." (*Ibid.*)

Background

Beginning early in 1990, FRA learned of at least 10 non-continuous center sill tank cars ("stub sill cars") that had pulled apart, i.e., experienced a complete failure, in the draft sill area. (Many freight cars are built so that a fabricated underframe structure transmits train pulling and braking forces under the full length of the car body: In contrast, a "stub sill" tank car uses the tank structure itself and has no underframe.) Four stub pull-aparts happened in Canada and six in the United States. The failures did not cause any deaths or injuries, and no hazardous materials were released. FRA and Transport Canada advised the Association of American Railroads' (AAR) Tank Car Committee of each incident and the Tank Car Committee opened a docket on the matter to investigate and track the situation.

On April 2, 1990, FRA wrote AAR and the Union Tank Car Company discussing a draft sill failure on a DOT105J400W Union-built tank car on the Kansas City Southern (KCS) at Shreveport, Louisiana. Union responded with information on four failures on the KCS, dating back to 1985, the most recent showing signs of overly high coupling speeds. The four cars were among a group of 157 similar cars built in two orders; the first, quick inspections of them did not show conclusive evidence of old, or long-standing, weld breaks. Union commenced a program of inspecting all welds in the head brace area and repairing cracks longer than 3 inches. In June 1990, Union reported a fifth car with a draft sill failure and the 48 cars also built under the same Certificate of Construction were added to the on-going program, for a total of 206 cars produced on three build orders.

While this was happening in the United States, on February 11, 1991, at the CSX yard in Sarnia, Ontario, tank car DCTX 33181—built to an AMF Beaird design by Hawker Siddeley Canada, Ltd.—incurred a draft sill separation during switching operations. Another sill separation on a similarly designed car in less than two months led AAR to issue an Early Warning Letter (EW–121) on May 2, 1991 advising carriers that 86 cars in the series DCTX or NCTX 33096–33189 might have the potential for sudden and complete stub sill failure at the weld attachment of the sill to the tank.

The Railway Association of Canada and Transport Canada agreed on an accelerated inspection plan on both a sample of stub sill tank cars with a history of accident involvement and a sample of stub sill tank cars more than 10 years old.

On June 13, 1991, FRA and Transport Canada signed a joint letter to AAR urging more speed in the investigation/solution of the stub sill failure problem; on July 17, members of the Tank Car Committee met with representatives of DOT and Transport Canada to discuss and resolve problems associated with stub sill failures. A pattern of frequent meetings ensued and the energies and talents of private industry and governmental agencies were focused on defining both the problem and the solution to it. All parties recognized the public economic consequences of taking cars out of service for inspection and repair and, given the priority for safe transportation, all parties sought to clarify, if not to minimize, such adverse impact as is unavoidable.

At the July 1991 Tank Car Committee meeting in Pueblo, Colorado, Union summarized its inspections to date and reported that one third of the cars it had inspected showed "indications of problems;" that the design for them was one in common use since 1966; and that Union suspects that damage due to previous derailment was a factor in 4 of the 5 incidents of sill failure. Before the end of July, FRA had formalized an agreement with Union regarding an inspection and repair program that had now grown to total 258 cars.

Also at the Tank Car Committee meeting in Pueblo, the U.S. and Canadian regulatory agencies made a formal request for an inspection program of a random sample of 1,100 stub sill tank cars, a theoretical engineering analysis of the stub sill design (to be completed by February 2, 1992), a report on the results of physical examinations conducted on cracks found in similar-design cars, and a 100 car sample of cars built to the AME Beaird design by NATX at Texarkana, Texas.

On August 9, 1991, AAR issued a circular letter (c–7697) formally establishing the 1,100 car sample examination; this letter also established a three-tier prioritization for tank cars: Priority I, for cars shopped due to accident or derailment damage—inspection and repair are required before the car is returned to service; Priority II, for cars with a history of defects critical to structural integrity—inspection and repair deadlines are established in the notice assigning the cars to this priority, but the usual period is three years; and Priority III, for cars in the 1,100 car random sample—completion to be achieved by December 31, 1991. Also on that same day, the Association issued Early Warning (EW) Letter 122, advising members and private car owners of the high incidence of cracks and serious manufacturing defects in cars built to the suspect AMF Beaird design. EW–122 required a total of 143 cars built by Hawker-Siddeley, of Nova Scotia, and Davie Shipbuilding, of Quebec, to be inspected. Four days later, on August 13, 1991, Transport Canada issued an order under its Railway Safety Act removing from service all tank cars built to the suspect design until they were inspected and all necessary repairs completed. After reviewing the results of an accelerated inspection and repair program, Transport Canada lifted its order on October 22, 1991.

At the request of FRA, the AAR issued a Maintenance Advisory Letter (MA–04) on August 19, 1991, requiring that cars built to the AMF Beaird design by U.S. builders undergo an accelerated inspection program effort to determine whether or not they also had a high

incidence of cracks and serious manufacturing defects.

By September, the fleet identified by Union Tank Car Company with potential stub sill problems had increased from 258 to 921 DOT105J300W cars built between 1977 and 1981 for vinyl chloride monomer service. During 1991, Union inspected 402 of the cars and found at least some indication of problems on one-fourth to one-third of them. The total count of Union tank cars with draft sill failures had climbed to seven when, at its October 1991 meeting, the AAR Tank Car Committee placed the identified cars into the Stub Sill Inspection Program as Priority II cars, to be inspected and repaired within 3 years.

In addition, the October Committee meeting included a review of the results of the inspections and tests performed in compliance with the AAR's Early Warning Letters and Maintenance Advisories; the Committee decided to notify the nearly 30 affected owners that approximately 7,000 cars were being placed in the AAR's Stub Sill Inspection Program as Priority II cars, with inspections and repairs to be completed in a three-year time frame.

At the January 1992, Tank Car Committee meeting, the committee received a report on the status of the "Priority III" 1,100 car random sample. Subsequent review of the data collected in that sample shows that a significant percentage of stub sill tank cars have defects that could lead to sudden and complete failure of the draft assembly—that is, that the coupler on the car, and the part of the car structure that holds the coupler, could break apart and fall off. The experience to date is that a coupler failure in a yard is dangerous but not catastrophic. Failure at main line track speeds is viewed as much more serious and nearly certain to lead to a derailment. While stub sill tank cars carry the entire spectrum of commodities, from extremely dangerous hazardous materials to clay slurry and tomato paste, it would be a false comfort to think that only those cars containing dangerous chemicals are serious threats to safety—any disruption to a train that might lead to a derailment has the potential for disaster.

The representatives of industry and the railroads who met with representatives of FRA and Transport Canada on March 17, 1992, presented a plan for inspecting tank car stub sills. Its major flaw, in FRA's judgment, was that it allowed too long for completion of the program. Promptness is all the more important in view of information developed during the inspections of dual diameter tank cars required by FRA's Emergency Order No. 16 (57 FR 11900). One of the fleets inspected during the early days after that order was issued showed stub sill cracks in about 45 percent of the cars. FRA cannot say that this is representative of the stub sill fleet at large, but neither can FRA rule out that possibility. The inspection program must begin now, and must continue as a matter of high priority until it is completed.

FRA recognizes that the ultimate success of this, or any other, safety program depends on a delicate tempering of the need for assured safety with the ability to produce it. There are upwards of 160,000 stub sill tank cars in the North American fleet and FRA cannot reasonably order all of them out of service until they are inspected and repaired. First, only certain designs now show sufficient problems to be included in the AAR priority program, and second, there is a practical limit on how quickly all stub sill cars could be inspected without totally disrupting railroad tank car service and not only causing unjustifiably severe effects on the Nation's economy but potentially hindering other inspection programs (such as Emergency Order No. 16, which addresses greater risks than those posed by tank car stub sills). Instead, FRA has worked with the tank car builders, owners, and the railroads to urge development of a plan and a procedure to inspect these cars at as rapid a pace as inspection capacity, safety priorities, and the demands of transportation allow.

Since the March 17 meeting, the time frames of the AAR plan have been shortened with the encouragement of FRA. The culmination of this effort is AAR Operations and Maintenance Circular No. 1 (attached to this order as Appendix A), made final on July 15, 1992, during a meeting of FRA, the Railway Progress Institute (representing tank car builders), and the AAR Tank Car Committee. AAR's O&M Circular No. 1 is a better focused approach than previous industry plans and will accord priority to those segments of the fleet presenting the greatest risk. Cars now in AAR's Priority II will be inspected in 18 months (rather than three years) or less, depending on their accumulated mileage; cars on the same Certificate of Construction as those in the Priority III sample that exhibited serious cracking will be on the same accelerated inspection schedule. Cars that have accumulated more than a half-million service miles will be placed on an even tighter inspection deadline.

More important to the purposes of this notice, AAR's O&M Circular No. 1 is a plan that FRA will enforce, both because this agency believes that the current history of tank car stub sill cracks and failures represents an emergency situation and because this agency cannot tolerate any further delay in the progress that must be made to inspect the stub sill tank car fleet and restore confidence in that fleet's ability to transport hazardous materials safely. Of course, should further developments indicate that this plan is not sufficient to address the emergency, FRA retains the authority to amend this order in any way it deems necessary.

Tank car "Owners"

This emergency order applies to "owners" of tank cars. The freight car safety standards require, at 49 CFR 215.301, that the railroad or private car owner reporting mark be displayed on the car.

Car reporting marks, an alpha/numeric identification such as ABC 1234 that is unique to each piece of railroad rolling stock, are assigned by the Secretary, Transportation Division of the Operations and Maintenance Department of AAR. Reporting marks, and other information about the car, including ownership, mechanical designation, size, and capacity, are part of the Universal Machine Language Equipment Register (UMLER) file, a computer file that serves as the primary source of data about the North American railroad equipment interchange fleet. UMLER is the master file for car hire and car mileage payments and for car movement reports under the TeleRail Automated Information Network (TRAIN II) system.

The specifications for the data contained in UMLER, including the identification of the owner, have been formalized in the Universal Machine Language Equipment Register (UMLER) Data Specification Manual printed, together with a listing of each car in the North American fleet, in *The Official Railway Equipment Register*, Tariff ICC RER 6400-Series, published by International Thomson Transport Press, New York, New York. It is to these data that FRA will look to identify the owner of a tank car.

However, FRA learned, during the inspections conducted under Emergency Order No. 16, that restricting the definition of owner to just "the owner of the reporting mark," was inadequate and could lead to inequities in enforcement.

Tank cars are commonly used under master lease agreements under which the lessee uses the car in exchange for a monthly rental payment. The holder of such an agreement, the lessee, has the

right to control the service of the car, i.e., to designate its next load and destination. A tank car master lease gives the lessee more control than the owner of the reporting mark over the day to day operation of the car; as long as the rental payment is made, neither the reporting mark owner nor the title holding owner (who may be an investment company) may be able to prevent the use of a tank car contrary to this Emergency Order.

FRA believes that the intent of Emergency Order No. 17 will be realized most clearly and most fairly, if all parties understand that, when FRA refers to a tank car "owner," that term is potentially as extensive as FRA's jurisdiction over "persons" and includes whatever interest controls or influences relevant activity involving the tank car. This means that the title holder, the reporting mark owner, and the lessee/shipper are all included as necessary to effect safety. Further, this means that FRA will look to the reporting mark owner to accomplish the inspections subject to this order but that FRA will not hesitate to seek a civil penalty from or take other enforcement action against a lessee/shipper, or any other "person," who impedes the performance of inspections subject to this order or who offers an improper car into transportation.

The AAR Inspection Program

AAR's O&M Circular No. 1, issued on July 17, 1992, establishes the "AAR Tank Car Stub Sill Inspection Program." The text of O&M Circular No. 1 is reproduced in Appendix A to this Emergency Order and incorporated herein by reference.

Finding and Order

FRA concludes that the continued use of stub sill tank cars, not subject to a rational and enforceable phased program of inspection and repair, poses an imminent and unacceptable threat to public safety. FRA further concludes that reliance solely on an industry program that is not self-enforcing, but depends on the cooperative response of multiple entities and persons, is inadequate to protect the public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432), delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered:

1. That owners of stub sill tank cars shall comply with the AAR Tank Car Stub Sill Inspection Program, and the AAR Tank Car Stub Sill Inspection Procedure, placed in effect in the Association of American Railroads' O&M Circular No. 1, issued to members and private car owners on July 17, 1992.

2. That owners of stub sill tank cars shall not return cars to service following their inspection until all defects have been repaired and the car is in full compliance with the Federal railroad safety regulations, including the Hazardous Materials Regulations, and the AAR Tank Car Manual.

3. That each owner of stub sill tank cars shall inspect his or her jacketed cars, and his or her cars with non-jacketed thermal protection systems, such that not less than the following proportion of cars of jacketed design (including cars with non-jacketed thermal protection systems) within an owner's fleet then remaining in service shall have been inspected by the end of the corresponding period:

Months elapsed	Proportion of fleet inspected
12	One fifth (⅕).
24	Two fifths (⅖).
36	Three fifths (⅗).
48	Four fifths (⅘).
60	Five fifths (⅝).

4. That each owner of stub sill tank cars shall inspect his or her non-jacketed cars such that not less than the following proportion of cars of non-jacketed design within an owner's fleet then remaining in service shall have been inspected by the end of the corresponding period:

Months elapsed	Proportion of fleet inspected
12	One seventh (⅐).
24	Two sevenths (⅔).
36	Three sevenths (⅜).
48	Four sevenths (⅘).
60	Five sevenths (⅝).
72	Six sevenths (⅚).
84	Seven sevenths (⅞).

5. That cars are considered inspected only when AAR Form SS–2 is submitted to the RPI/AAR Tank Car Safety Project.

6. That, within thirty days of the end of each period set forth in paragraphs 3 and 4 above, each owner of stub sill tank cars shall report in writing to the FRA Office of Safety Enforcement, Hazardous Materials Division, 400 Seventh Street SW., Washington, DC 20590 the total number of jacketed cars (including cars with non-jacketed thermal protection systems) and non-jacketed cars then remaining in service in his or her fleet and the cumulative total of each type inspected in accordance with Emergency Order No. 17.

Relief

Tank car owners may obtain relief from this Emergency Order by inspecting the affected cars as required and repairing them as necessary.

Penalties

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 45 U.S.C. 439.

Interpretations and Statements of Enforcement Policy

Because this Emergency Order directs compliance with a Tank Car Stub Sill Inspection Program established by AAR, FRA believes that affected members of the public are entitled to know how FRA will discharge its enforcement functions. The following interpretations are offered to assist compliance with Emergency Order No. 17.

1: The Tank Car Stub Sill Inspection Program calls for jacketed cars, and cars with non-jacketed thermal protection systems, "to be shopped, stub sills inspected, and all defects/cracks repaired within 5 years;" and non-jacketed cars "to be inspected and all stub sill defects/cracks repaired within 7 years." Read literally, these statements could be taken to require performing repairs on cars that the owner decides to scrap following the stub sill inspection. FRA will not require cars destined for scrapping to be repaired (unless repairs are necessary to permit safe movement to the point where scrapping will occur), but will insist that repairs be completed before any car is returned to service.

2: Paragraph 6 of the Inspection Program permits AAR to "exempt owners from the 400,000 mile requirement" on a showing by the owner that rebuts the presumption that cars older than 20 years have moved more than 400,000 miles. FRA insists that all requests for mileage exemptions be in writing, that replies granting or denying the requests be in writing, that AAR maintain files on such requests, and that FRA have immediate access to those files during normal business hours.

3: Paragraph 7 of the Inspection Program gives the Tank Car Committee authority to determine the priority inspection program for groups of cars demonstrating a pattern of defects critical to stub sill integrity. FRA has no essential objection to that procedure as

long as the Committee's actions do not extend any of the time deadlines established in paragraphs 2 through 6 of the Inspection Program.

4: This Emergency Order requires each owner to inspect a proportionate number of its cars each year the Inspection Program is in effect. The decision to include this detail in the Emergency Order is based, first, on the need to gather inspection data quickly to continue the assessment of all segments of the stub sill tank car fleet, of the various designs used in different types of service, and of the danger these cars appear to represent to the public, and, second, on the need to spread the burden of this program throughout all owners of stub sill tank cars. The AAR Inspection Program could be read to permit all jacketed cars, for instance, to be inspected between the fourth and fifth anniversaries of O&M Circular No. 1, but FRA cannot continue to wait for the industry to gather stub sill inspection data; such delay would significantly increase the risk of additional service failures. Preliminary data available to FRA suggest that, aside from the cars assigned by Emergency Order No. 17 to inspection deadlines of 24 months or less, there are about 80,000 cars to be inspected within 5 years and about 40,000 cars to be inspected within 7 years. FRA therefore expects the industry to inspect about 16,000 jacketed cars and about 5,700 non-jacketed cars each year of the Inspection Program. Further, as the description of tank car "owners," above, makes clear, FRA insists that all persons who control the use or service of tank cars subject to this Emergency Order cooperate to abate the hazard posed by the continued use of uninspected stub sill tank cars.

Notice to Affected Persons

Notice of this Order will be provided by publishing it in the **Federal Register.** Copies of this Emergency Order were sent by mail or facsimile prior to publication to the AAR, the American Short Line Railroad Association, the Regional Railroads of America, the Railway Progress Institute, all members of the AAR Tank Car Committee, and to owners of tank cars (including owners of stub sill cars identified by AAR as potential candidate cars for inclusion in the Priority II category) as follows: ACF Industries, Inc.; Aeropres Corp.; Amoco Canada Petroleum Company, Ltd.; Amoco Chemical Company; Amoco Oil Company; Baden Investment Company; Bay Cities Gas; Canadian Enterprise Gas Products Ltd.; CGTX, Inc.; Chevron U.S.A. Products Company; Coastal Chem, Inc.; CONOCO Inc.; Continental Tank Car Corporation; Denco Petroleum, Inc.; General American Transportation Corporation; General Electric Railcar Services Corp.; GLNX Corporation; HBG Enterprises of Tampa, Inc.; Home Oil Company Limited; Mallard Transportation Company; Mapco Gas Products, Inc.; Mile-High Railcar Services, Inc.; Mobil Oil Corporation; OXY NGL Inc.; Petrosol International, Inc.; Phillips 66 Company; PLM Transportation Equipment Corp.; PTO, Inc.; Rapco Transportation Company; Rocky Mountain Transportation Services; SAZ Transportation Corporation; Suburban Propane/Petrolane; Sun Refining and Marketing Company; Temco Corporation; Texas Petrochemicals Corporation; Transportation Equipment, Inc.; Trident NGL, Inc.; Trinity Industries, Inc.; Union Tank Car Company; United States Rail Services, Inc.; Vista Chemical Company; Willard Grain & Feed Inc.; and ZIP Transportation Company, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found 49 CFR part 211 (see 211.47, .71–.75).

Issued in Washington, DC on September 3, 1992.

Gilbert E. Carmichael,
Administrator.

Appendix A

Association of American Railroads' O&M Circular No. 1

The text of the Association of American Railroads' O&M Circular No. 1, as issued on July 17, 1992, over the signature of Harvey H. Bradley, Vice-President, Operations and Maintenance Department is as follows:

AAR O&M Circular No. 1—Tank Car Stub Sill Inspection Program

1. Stub sills on all cars, when shopped for any reason in owner-approved shops, are to be inspected and all defects/cracks repaired.

2. All jacketed cars and all cars with non-jacketed thermal protection systems are to be shopped, stub sills inspected, and all defects/cracks repaired within 5 years.

3. All non-jacketed cars are to be inspected and all stub sill defects/cracks repaired within 7 years.

4. All cars assigned to the AAR Priority Inspection Program by the Tank Car Committee as of the effective date of this Circular are to have stub sills inspected and all defects/cracks repaired within 18 months, except that cars that have accumulated more than 500,000 miles must be inspected in accord with the accelerated schedule described in paragraph 6, below.

5. Cars built to the same Certificate of Construction as those reported on the 1100-car survey with transverse weld cracks greater than 3 inches, or longitudinal weld cracks greater than 6 inches, are to be inspected and all defects/cracks repaired within 18 months, except that cars that have accumulated more than 500,000 miles must be inspected in accord with the accelerated schedule described in paragraph 6, below.

6. All stub sill cars having actual or estimated accumulated mileage in excess of 400,000 miles must be inspected and all defects/cracks repaired in accord with the following schedule:

- Greater than 800,000 miles: inspected within 4 months;
- Greater than 600,000 miles: inspected within 7 months;
- Greater than 500,000 miles: inspected within 13 months;
- Greater than 400,000 miles: inspected within 18 months, except that non-insulated cars must be inspected within 24 months.

In cases where total car mileage cannot be reasonably estimated from existing records, owners shall use a straight line projection from the average mileage over the past six years. If the average mileage over the past six years is unavailable, owners shall assume that any car older than 20 years has accumulated mileage in excess of 400,000 miles, unless the owner can show that the cars are more likely than not to have accumulated less than 400,000 miles. In such cases, the AAR may exempt owners from the 400,000 mile requirement.

7. If inspections reveal any patterns of defects/cracks critical to stub sill structure integrity, owners shall inspect cars according to an assigned priority inspection program as determined by the AAR Tank Car Committee.

8. Cars built or rebuilt, and cars whose draft sills have been upgraded through an AAR-approved alteration, and thoroughly inspected after January 1, 1984, and all cars having had stub sills thoroughly inspected within the last 2 years, are exempt from further inspection, except for compliance with AAR Field Manual Rule 88 B.

9. All inspection data is to be submitted to the RPI/AAR Tank Car Safety Project for analysis.

10. Cars inspected pursuant to this program may not be returned to service until all defects noted are repaired and the car is in full compliance with the Federal railroad safety regulations and the AAR *Specifications for Tank Cars.*

11. Cars inspected pursuant to this program shall be marked with a two inch green square on diagonally opposite sill webs.

12. Car owners are to maintain records and dates of all stub sill inspections, including hard copies of completed Forms SS–2.

Priority Inspection Program

The Priority Inspection Program, established by the AAR Tank Car Committee, is described by the Committee as follows:

The AAR Priority Inspection Program requires inspection and repair, if necessary, of all stub sills on tank cars with a history of defects and/or cracks, critical to the structural integrity, which could cause failure of the sill or its components. Any cars subsequently assigned to this program must be inspected and repaired as necessary within three years, or as established by AAR Early Warnings, Maintenance Advisories or other publications.

O&M Circular No. 1—Tank Car Stub Sill Inspection Procedure

Inspections must be conducted at facilities that have the capability and experienced personnel to administer the testing methods utilized. Liquid penetrant examinations must be conducted in accord with Section W11.03 of M–1002, *Specifications for Tank Cars.* Acoustic Emissions (AE) testing must be conducted in accord with Annex Z of the AAR's *Procedure for Acoustic Emission Evaluation of Tank Cars and IM–101 Tanks.* Insulated cars must have inspection ports fabricated in accord with the car builder's recommendations. Draft gear must be removed if attachment welds are obscured by design (reference Figure #5), except it is not necessary to remove draft gear if welds are inspected using fiber optics or if sill is tested by the acoustic emission (AE) method. Inspection ports are not required for AE testing. Area to be inspected must be cleaned as may be required by the inspection method to be utilized.

Inspection

Refer to Figure (1–6) which most closely reflects stub sill design on car being inspected. Weld attachments of draft sill-to-pad, draft sill-to-head brace (if used), head brace-to-pad, and pad-to-tank must be examined. All of these welds that are accessible must be examined by visual means, enhanced by magnification if necessary, by liquid penetrant method, or by other equivalent or superior testing method. Welds that are not accessible, such as welds that are covered by a head shield, may be examined visually using fiber optic or equivalent technology.

Reporting

Inspection results are to be recorded on Form SS–2 and submitted to the car owner, who is to arrange for transfer of the data to computer format. Car owner must submit all Form SS–2 data monthly in computer-readable format.

Defects other than those recorded on the SS–2 form should be separately reported to car owner.

(Note: Because the AAR's O&M Circular No. 1 has been sent to all AAR members and to private car owners, FRA is not reproducing the inspection program's internal reporting forms or diagrams in the **Federal Register**.)

[FR Doc. 92–21850 Filed 9–10–92; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. 92–45; Notice 1]

Mazda (North America), Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mazda (North America), Inc. (Mazda) representing Mazda Motor Corporation of Hiroshima, Japan, has determined that some of its vehicles fail to comply with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment," Federal Motor Vehicle Safety Standard (FMVSS) No. 108, and has filed an appropriate report pursuant to 49 CFR part 573. Mazda 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 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 judgment concerning the merits of the petition.

During the period of July 1991 through June 1992, Mazda produced 29,622 model 929 passenger cars which were equipped with headlamps that failed to include the "O" mark required by FMVSS No. 108 for a point of reference when aiming the lamps. Further, these vehicles failed to include aiming instructions on a permanently affixed label or in the owner's manual. In addition, Mazda produced 7,000 model 626's which incorporated the "O" mark on the headlamp, but did not include aiming instructions on a permanently affixed label or in the owner's manual.

Paragraph S7.8.5.2(a)(2) *Horizontal aim* states that "[a]n 'O' mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle." Paragraphs S7.8.5.2(a)(1) *Vertical aim* and (a)(2) reference the necessity to provide "an equal number of graduations from the 'O' position representing angular changes in the axis." The subject headlamps do not bear the "O" mark.

Paragraph S7.8.5.2(b)(1) *Aiming instructions* states that "[t]he aiming instructions for properly aiming the headlighting system using the VHAD [vehicle headlamp aiming device] shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, *or* in the vehicle operator's manual" (emphasis added).

Mazda supports its petition for inconsequential noncompliance in two ways. To support its omission of aiming instructions, Mazda offered its own rationale. To support its omission of the "O" mark, Mazda incorporated, by reference, the rationale used by Koito Manufacturing Company, Ltd. (Koito) in its July 7, 1992, petition to NHTSA on this same issue [57 FR 33543].

Mazda supports its omission of aiming instructions with the following:

It is Mazda's belief that the designs of the VHADs incorporated in both the Mazda 929 and the Mazda 626 are so simple to use and the markings are so obvious, that even untrained individuals will have no difficulty correctly aiming the lamps using the VHAD without any instructions.

To the extent that there are individuals who would be reluctant to attempt aiming adjustments without instructions, every Mazda dealer has such information readily [sic] available.

[R]elying on outside assistance to properly aim the headlights * * * is identical to the situation that has successfully existed for so many years for vehicles that require external mechanical aiming.

It is also our belief that the headlights on these vehicles will only rarely need adjustment. The vehicles are shipped with the headlights properly aimed, and unless they are involved in a crash, there will be little instance of the aim needing readjustment.

Unlike Mazda, Koito stated in its petition that the vehicles on which its noncompliant headlamps were installed included instructions in the owner's manuals as to how the headlamps could be aimed. This is not true in Mazda's case. In Koito's petition, its rationale for omission of the "O" mark was as follows:

(1) The purpose of the "O" mark would be to provide the base point on the scale. In place of this mark, the Koito headlamps concerned make use of a pair of lines which are clearly distinguished by their color and/or their thickness (bold). Even in the absence of the "O" mark, the user and dealer can easily determine the reference lines and perform a correct aiming adjustment.

* * * * *

(3) Headlamps which are equipped with aiming pads allow aiming by an aimer which must satisfy Society of Automotive Engineers (SAE) J602 requirements, as stipulated by FMVSS. Of aimers meeting SAE J602 requirements and currently available on the market, the most popular is the one made by H-Company.

This aimer does not make use of the "O" mark. It features indicator scale reference lines which are very similar to Koito's VHAD (Vehicle Headlamp Aiming Device) reference lines, and which function in the same way. We believe that the great majority of the users and dealers are well accustomed to this system.

(4) Up to the present date, Koito has not received any claim or complaint representing a user's inability to determine the reference line positions.

(5) In order to demonstrate the efficacy of this aiming system, Koito has conducted a demonstration test. Ten unbiased subjects with no prior familiarity with the system were asked to readjust headlamps which had been deliberately misaligned. All ten were successful in making the required corrections in the manner intended by the designers of this system.

(6) All of the concerned headlamps were subject to the test and were certified [to be in] compliance [with] all the requirements, including [the] VHAD adjusting system, in FMVSS 108 by ETL Testing Laboratories Inc., an authoritative organization in the United States. This shows that there is no problem in headlamp aiming inspection and adjustment.

Interested persons are invited to submit written data, views, and arguments on Mazda's petition, 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 indicated 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: October 13, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-21976 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-47; Notice 1]

Transportation Manufacturing Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

Transportation Manufacturing Corporation (TMC) of Roswell, New Mexico has determined that some of its vehicles are equipped with brake hoses that fail to comply with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106. "Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. TMC 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 judgment concerning the merits of the petition.

Paragraph S7.3.7 of Standard No. 106 specifies that, "[e]xcept for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before separation of adjacent layers (S8.6)."

TMC was notified by Dana Corporation (the manufacturer of this hose) of a potential cover adhesion noncompliance involving its H33806 hose which TMC used for air brake applications on buses manufactured at Roswell, New Mexico. Some of the subject hoses do not comply with the adhesion requirements of FMVSS No. 106, "Brake Hoses." TMC supports its petition for inconsequential noncompliance with the following.

TMC states that the subject hoses are used in two applications. In the first, the hose operates at 85 pounds per square inch (psi) air pressure and the only function is to keep the parking brake off. If the hose were to fail completely in this application, the parking brake would immediately engage. The service brake would remain functional, but air pressure would rapidly be lost in the system. In the second, the hose operates at 100 psi air pressure and it functions as part of the backup brake system. In this application a hose failure would not affect the operation of a properly functioning main service brake system.

Due to the length of time the subject hoses have been on the buses, differentiating the possibly noncompliant hoses from the compliant ones would be difficult, if not impossible, due to wear and tear from typical use. TMC estimates that less than eight percent of the installed hoses are of the potentially noncompliant type, but over 4,500 hoses would be required to be replaced if a recall were required. TMC believes that the potential safety problems would be greater if all 4,500 hoses were replaced, without factory quality control, than if the existing hoses continue to be used.

In summary, based on TMC's warranty history and the function of the hoses, TMC believes that the noncompliance will not affect the safety of their vehicles and, therefore, is inconsequential to motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of TMC, 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 indicated below will be considered. The petition 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 thereof will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 13, 1992.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-21977 Filed 9-10-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980 Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Forms 9455 and 9456.
Type of Review: New collection.
Title: IRS Taxpayer Education Programs Annual Report (9455) IRS Taxpayer Education Programs Annual Report 2nd Notice (9456).
Description: The data collected will be used to estimate the number of individuals who teach IRS' Educational Programs, and the number of students who are exposed to the Understanding Taxes High

School, UT-8th Grade, UT-Post Secondary, and the Small Business Tax Education Programs during the course of a year. It will also be used to justify the continued use of these programs. This effort is in line with IRS initiatives on reducing taxpayer burden and Compliance 2000 initiatives to encourage voluntary compliance with tax laws.

Respondents: Individuals or households, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 120,800.

Estimated Burden Hours Per Respondent:

Form	Response time
9455	10 minutes.
9456	10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 20,137 hours.

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Focus Group Interviews to Assess Educational and Compliance Needs of Self-Employees Puerto Rican Taxpayers.

Description: The interviews are necessary to obtain public input to identify reasons Puerto Rican taxpayers do not file Form 1040PR. The results will be used to develop educational materials, identify appropriate media educational materials, identify appropriate media, and develop enforcement efforts as necessary.

Respondents: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Burden Hours Per Respondent:

Administering Screening Questionnaire.....67 hours
Conducting Focus Group Sessions....162 hours

Frequency of Response: Other.

Estimated Total Reporting Burden: 229 hours.

OMB Number: 1545–0229.

Form Number: IRS Form 6406.

Type of Review: Revision.

Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.

Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 16,000.

Estimated Burden Hours Per Respondent/Respondent:

Recordkeeping.....12 hours, 40 minutes
Learning about the law or the form...3 hours, 23 minutes
Preparing the form.....6 hours, 32 minutes
Copying, assembling, and sending the form to the IRS.....48 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 374,240 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–21851 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 3, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvnia Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1274.

Form Number: IRS Form 8453–NR.

Type of Review: Extension.

Title: U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing.

Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Magnetic Media Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,250 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–21852 Filed 9–10–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 1, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New.

Form Number: CF 5106.

Type of Review: New collection.

Title: Importer ID Input Record.

Description: CF 5106 is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill on a refund check upon adjustment of a cash collection.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 240.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 48 hours.

OMB Number: 1515–0109.

Form Number: None.

Type of Review: Reinstatement.

Title: Proof of Use for Rates of Duty Dependent on Actual Use.

Description: The declaration is needed to ensure Customs Control over merchandise which is duty free. The

declaration shows proof of use and must be submitted within 3 years of the date of entry or withdrawal for consumption.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 700.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,025 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–21853 Filed 9–10–92; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0385.
Form Number: ATF REC 5900/1.
Type of Review: Extension.
Title: Proprietors of Claimants Exporting Liquors.
Description: Distilled spirits, wine and beer may be exported from bonded premises without payment of tax or these products may be exported in a taxpaid status with the tax claimed back (drawback). Record is needed to allow the amounts exported to be verified and to maintain accountability over products. Protects the revenue.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 120.
Estimated Burden Hours Per Respondent: 60 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 7,200 hours.
OMB Number: 1512–0387
Form Number: ATF REC 7570/2 and 7570/3.
Type of Review: Extension.
Title: Records of Acquisition and Disposition, Importers, Dealers, Collectors of Firearms, and Importers, Dealers, Collectors of Ammunition (Pistol/Interchangeable Calibers).
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control law.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 172,250.
Estimated Burden Hours Per Recordkeeper: 3 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burdern: 516,750 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–21952 Filed 9–10–92; 8:45 am]

BILLING CODE 4810–31–M

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on September 16, 1992, in the conference room of the office of Radio Marti, Donohoe Building, 400 6th Street SW., Washington, DC 20547. Below is the intended agenda.

Wednesday, September 16, 1992

Agenda

Part One—Closed to the Public

10 a.m.

1. Radio Marti Technical Adjustments
2. TV Marti General Update
3. Radio and TV Marti Broadcasting Procedures

Part Two—Open to Public

1 p.m.

4. Office of Cuba Broadcasting Budget Update
5. Modification of Editorial Guidelines
6. Public Testimony

Items one, two and three which will be discussed from 10 a.m. to 1 p.m., will be closed to the public. Discussion of items one, two and three will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact James Skinner at (202) 401–7312 to make prior arrangements since access to the building is controlled.

Dated: September 4, 1992.

Henry E. Catto,

Director.

[FR Doc. 92–21863 Filed 9–10–92; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 177
Friday, September 11, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 15, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Parts 308 and 325 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedure," and "Capital Maintenance," respectively, which implement the "prompt corrective action" provisions mandated by section 131 of the Federal Deposit Insurance Corporation Improvement Act, by (1) establishing procedures for "downgrading" an institution to a lower capital category, and for submitting and reviewing capital restoration plans and prompt corrective action directives including those directives requiring the dismissal of directors and senior executive officers, and (2) establishing and defining, for insured State-chartered nonmember banks, the capital measures and levels, and for insured branches of foreign banks, comparable asset-based measures and levels, that are to be used in determining the supervisory actions authorized to be taken under section 38 of the Federal Deposit Insurance Act.

Assessment-related regulations:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

Memorandum and resolution re: Proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–3811.

Dated: September 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–22058 Filed 9–9–92; 9:14 am]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, September 15, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application for consent to purchase assets and assume liability to pay deposits and for consent to establish two branches:

Guaranty Bank, Mount Pleasant, Texas, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Deport, Deport, Texas, and for consent to establish the two offices of The First National Bank of Deport as branches of Guaranty Bank.

Matters relating to the Corporation's supervisory activities.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–3811.

Dated: September 8, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–22059 Filed 9–9–92; 9:14 am]

BILLING CODE 6714–0–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR, 37590, August 19, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Wednesday, August 26, 1992.

CHANGES IN THE MEETING: The following topic was deleted from the agenda during the open portion of the meeting.

Leverage Ratio—Final Rule.

CHANGES IN THE MEETING: The following Report was deleted from the agenda during the closed portion of the meeting.

Office of Strategic Planning
Leverage Ratio: Transitional and Operational Issues

The above matter is exempt under Section 552b(c)(9)(A)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92–22126 Filed 9–9–92; 2:20 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 16, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–22051 Filed 9–9–92; 9:13 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R., Friday, August 21, 1992, Page No. 38094.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 16, 1992.

CHANGES IN THE AGENDA: The Federal Trade Commission has deleted the following item from its agenda and cancelled the open meeting previously scheduled for September 16, 1992:

Consideration of possible amendments to the Mail-Order Merchandise TRR.

Donald S. Clark,

Secretary.

[FR Doc. 92–22154 Filed 9–9–92; 3:02 pm]

BILLING CODE 6750–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1452]

TIME AND DATE: 10 a.m. (EDT), September 15, 1992.

PLACE: Sequoyah Nuclear Plant, Soddy Daisy, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on August 19, 1992.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Short-Term Borrowing from the Treasury.

A2. Tax Equivalent Payments to States and Counties for the Fiscal Year Ending September 30, 1992.

B—Purchase Awards

B1. Contract with General Electric Company for Steam Turbine Strategic Spares for Bull Run, Paradise, and Widows Creek Fossil Plants.

B2. Contract with ASEA Brown Boveri for Steam Turbine Strategic Spares for Cumberland Fossil Plant.

B3. Requisition YH–93383E—Corporate Network Strategies Procurement—Information Services.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting Approximately 0.30 Acre of the Knoxville Power Service Center Property.

E2. Abandonment of Flowage Easement Rights Affecting Approximately 0.44 Acre of Land in Washington County, Virginia.

E3. Grant of Easements Affecting Approximately 10.26 Acres of Land in Washington County, Virginia.

E4. Lease of a 12.8 Acre Tract of TVA Property in Hamilton County, Tennessee.

E5. Sale of Noncommercial, Nonexclusive Permanent Easements Affecting Approximately 0.96 Acre of Land on Tellico Lake in Loudon and Monroe Counties, Tennessee.

E6. Grant of 30-Year Recreation Easement Affecting 5.45 Acres of Wheeler Reservoir Land in Madison County, Alabama.

E7. Grant of Permanent Easement Affecting 0.22 Acre of Chickamauga Lake Land in Bradley and McMinn Counties, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Recommendations Resulting from Negotiations with the Salary Policy Employee Panel.

F3. TVA Contribution to the TVA Retirement System for Fiscal Year 1993 and System Annual Report.

F4. Personal Services Contract with Gilbert/Commonwealth, Inc.

F5. Partners in Performance Contract with General Electric Company.

F6. Delegation of Authority to Vice President, Fossil Fuels, to Award a Contract to Norfolk Southern Corporation—Rail Coal Transportation to Kingston Fossil Plant.

INFORMATION ITEMS:

1. Letter of Intent with General Electric Company for Work to be Performed by GE for Fall 1992 Bull Run Fossil Plant, Paradise Fossil Plant Unit 1, and John Sevier Unit 4 Outages.
2. Implementation of Revised Salary Structure and Pay Rates for Salary Schedule SG—Public Safety Schedule.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: September 8, 1992.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 92–22066 Filed 9–9–92; 2:19 pm]

BILLING CODE 8120–08–M

Corrections

Federal Register
Vol. 57, No. 177
Friday, September 11, 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 HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0905-AD64

National Vaccine Injury Compensation Program; Revision of the Vaccine Injury Table

Correction

In proposed rule document 92-18873 beginning on page 36877 in the issue of Friday, August 14, 1992, make the following corrections:

1. On page 36879, in the first column, in the last paragraph, in the eighth line, "Vaccine" should read "Vaccines".

2. On the same page, in the second column, under **FINDINGS**, in paragraph 3., in the 6th line, "Guilliam" should read "Guillain".

3. On the same page, in the 3d column:

a. In the 4th line of the note, "given a" should read "given as".

b. In the 14th line of the note, "TD and" should read "Td, and".

c. In the 2d line of heading *A.*, "*Arrow*" should read "*Narrow*".

4. On page 36880, in the 3d column, in the 1st complete paragraph, in the 12th line, "STP" should read "DPT".

5. On the same page, in the same column, in the third line from the bottom, "vaccines." should read "vaccinees.".

6. On page 36881, in the first column, in the seventh line of the note, "vaccines." should read "vaccinees.".

7. On the same page, in the second column, in the second complete parapgraph, in the fourth line, "rubella" was misspelled.

8. On the same page, in the third column:

a. In the seventh line, "*First*" should be capitalized.

b. In the ninth line, "*p. 100–1010*" should read "*p. 1009–1010*".

§ 100.3 [Corrected]

9. On page 36883, in § 100.3(a), the Vaccine Injury Table contained numerous errors. It also should have appeared on a separate page. The complete table is reprinted below:

VACCINE INJURY TABLE

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. DTP; P; DT; Td; or Tetanus Toxoid; or in any combination with Polio; or any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Pertussis Bacteria, or Specific Pertussis Antigen(s)	
A. Anaphylaxis or anapyhlactic shock	4 hours.
B. Encephalopathy (or encephalitis)	72 hours.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(a). Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component;	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
C. Residual seizure disorder in accordance with subsection (b)(3)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
D. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(b). In the case of measles, mumps, rubella (MMR), measles, rubella (MR) or rubella vaccines only	
A. Chronic arthritis	42 days.
B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury or condition arose within the time period prescribed.	Not applicable.
III. Polio Vaccines (other than Inactivated Polio Vaccine)	
A. Paralytic Polio	
——in a non-immunodeficient recipient	30 days.
——in an immunodeficient recipient	6 months.
——in a vaccine associated communty case	Not applicable.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Inactivated Polio Vaccine	
A. Anaphylaxis or anaphylactic shock	4 hours.

VACCINE INJURY TABLE—Continued

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
B. Any acute complication or sequila (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.

10. On the same page, in the second column, in § 100.3(b)(1), in the next to the last line, "[a]" should read "(a)".

11. On page 36884, in the first column, in § 100.3(b)(2)(i)(B), in the first line, "*or age*" should read "*of age*"; in the second line, insert a comma following "*older*".

12. On the same page, in the first column, in § 100.3(b)(2)(iii), in the second line, "Infantile" should be capitalized.

13. On the same page, in the 2d column, in § 100.3(b)(3)(ii), in the 11th line, "administrative" should read "administration".

14. On the same page, in the third column, in § 100.3(b)(6)(ii), in the 4th line, "disorder" should read "disorders"; in the 16th line, "disease," should read "diseases,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OPHC-025-N]

Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions

Correction

In notice document 92-17637 beginning on page 33202 in the issue of Monday, July 27, 1992, make the following corrections:

1. On page 33203, in the second column, in the first column of the table "**BRISTOL COUNTY**", "02" should appear preceding all of the three digit zip codes.

2. On the same page, in the same column, in the third line from the bottom, insert "Suite" after "Park,".

3. On page 33204, in the first column, under "a. Kaiser Foundation", in the first line, "November 27, 1992" should read "November 27, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-020-4212-13; CACA 26721]

Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Public Lands in Modoc County, CA

Correction

In notice document 92-16936 appearing on page 32025 in the issue of Monday, July 20, 1992, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the third line, "516" should read "916".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

Country of Origin Marking Trade Forums

Correction

In notice document 92-20391 appearing on page 38712 in the issue of Wednesday, August 26, 1992, make the following correction:

In the first column, in the fourth line from the bottom, "927-1669" should read "927-1969".

BILLING CODE 1505-01-D

federal register

Friday
September 11, 1992

Part II

Department of Transportation

Coast Guard

46 CFR Part 30, et al.
Stability Design and Operational Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 32, 35, 70, 78, 90, 97, 107, 108, 109, 167, 169, 170, 171, 184, 185, 188, 196

[CGD 89-037]

RIN 2115-AD33

Stability Design and Operational Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the stability design and operational regulations for inspected vessels to incorporate requirements of recently adopted amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS). With certain exceptions, the requirements in this final rule will apply to all new and existing vessels. These regulations are intended to minimize the potential for vessel capsizing caused by inadequate damage stability and related operational considerations.

EFFECTIVE DATE: December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division, (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this final rule are Ms. Patricia L. Carrigan, Project Manager, Office of Marine Safety, Security and Environmental Protection and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On February 13, 1990, the Coast Guard published a notice of proposed rulemaking entitled Stability Design and Operational Regulations in the **Federal Register** (55 FR 5120). The Coast Guard received twenty-eight letters commenting on the proposal. A public hearing was requested in one of the comment letters but the Coast Guard decided that a public hearing was not necessary because the concerns addressed in this letter were resolved in this final rule.

Background and Purpose

The United States is a member of the International Maritime Organization (IMO) and is signatory to SOLAS. As such, the U.S. has adopted the requirements of SOLAS and its amendments. In October 1988, the Maritime Safety Committee of the IMO, adopted a series of stability related amendments to SOLAS. These amendments relate to the stability of passenger ships after damage, the use of draft marks and indicators, optional use of stability computers, periodic determination of lightship characteristics, the use of stability information, and the closing of loading doors before going to sea. These amendments came into force on April 29, 1990 for vessels requiring a SOLAS safety certificate.

All of the amendments to SOLAS, except the amendment concerning the stability of passenger vessels after damage, were initiated by the United Kingdom following the tragic capsizing of the English Channel ferry, HERALD OF FREE ENTERPRISE, in the spring of 1987. Nearly 200 people lost their lives. Prior to the HERALD capsizing, the amendment on residual stability of passenger vessels after damage had been under consideration by the IMO Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF). However, international concern after the HERALD OF FREE ENTERPRISE disaster provided the impetus to promote rapid adoption of all these amendments at IMO.

Discussion of Comments and Changes

Of the twenty-eight letters received commenting on the proposed regulations, four were from mobile offshore drilling unit (MODU) owners/operators, one from a MODU operator association, one from a tankship owner/operator, one from a tank barge owner/operator, one from an offshore, supply vessel (OSV) owner/operator, seven from Great Lakes and/or oceangoing cargo ship owners/operators, two from cargo ship associations, one from a cargo ship captain, one from a shipyard, one from a naval architecture firm, one from a river passenger vessel owner/operator, one from a passenger vessel owners' association, one from the Military Sealift Command, one from the Naval Sea Systems Command, one from the State of Texas Transportation Department, and three from Coast Guard field offices. The comments have been grouped by subject and are discussed below. A summary statement of any change is included when appropriate.

General Comments

(1) Several of the comments questioned the overall application of these rules to other than passenger vessels, stating that the rules were developed specifically for passenger vessels.

All of the regulations, except the regulation concerning the stability of passenger vessels after damage, were developed by the IMO in response to the tragic capsizing of the English Channel roll-on/roll-off passenger/cargo ferry, *HERALD OF FREE ENTERPRISE.* These IMO amendments were developed to remove some of the hazards identified during the investigation of this casualty.

The particular hazards these amendments were designed to remove include the following:

(a) The casualty investigation uncovered that the vessel was significantly overweight. Some documented modifications were responsible for a portion of the added weight, but a significant amount of the change was the result of weight growth from undocumented sources such as paint, stores, and dunnage. As a result, the stability information provided in the vessel's stability book could not be used to evaluate the stability in this different lightweight condition.

(b) An accurate accounting of weight and distribution of cargo and passengers was not completed.

(c) The draft of the vessel was not checked prior to departure; instead, false entries were made in the log book.

(d) The stability of the vessel was not verified prior to departure.

(e) The vessel's loading doors were not closed before departure.

(f) The master used negative reporting to determine the vessel was seaworthy. As an example of negative reporting, the master assumed that the loading doors were closed because he was not told that the loading doors were open.

These hazards were contributing causes of this casualty, but these kinds of hazards are not unique to passenger vessels, cargo ferries, or any other specific vessel type. To reason that all safety standards, especially operational regulations, are applicable only to one vessel type merely because the standard was generated in response to a casualty involving that type of vessel is not acceptable. Any operational safety standard which may prove successful on one type of vessel is worth consideration for application to other vessel types.

(2) One comment noted that some of the proposed rules exceeded the requirements of some foreign governments. Two of the comments advocated the IMO's new Code of Safety for the Equipment and Construction of Mobile Offshore Drilling Units (MODU Code) as the only source for all MODU standards.

The Coast Guard has a long term goal to incorporate and apply the various minimum international standards set by the IMO to U.S. vessels thereby ensuring that foreign vessels do not have an unfair economic advantage. At the same time, the Coast Guard must continue to ensure that the needs of domestic marine safety are met. There are many difficulties in fully achieving the implementation of IMO standards. Some U.S. regulations, such as those covering vessel stability, predate international standards and are more comprehensive in many areas than the current IMO standards. Where safety is not reduced, the Coast Guard is implementing IMO standards as equivalent and as an acceptable alternative to existing U.S. standards. Where equivalency of standards is not possible or where a safety concern is demonstrated, U.S. regulations continue to exceed IMO standards. International standards are minimum standards that have been adopted on a global scale. If enforcement of these international standards is not sufficient to fulfill the Coast Guard's responsibilities, they must be supplemented, as has been done here, to ensure that an adequate level of safety is maintained.

Door Closing and Logging Requirements

(3) Two comments objected to this provision because not all of their vessels have this type of loading door.

The intention of this provision is to require the closing and logging of the loading doors only on those specific vessels that have the type of loading door described in the regulations. All other vessels are exempt from this provision. The wording in § 78.17–33, § 97.15–17, § 167.65–38, § 185.20–17, and § 196.15–18 has been clarified to reflect this intent.

Stability Verification and Logging Requirements

(4) One comment objected to the provision requiring verification of stability because the stability letter already outlines the master's duties with regard to stability. Two other comments stated that this provision is superfluous as the master of a vessel is already always responsible for the stability of the vessel. Another comment objected to the provision because "at all other times necessary for the safety of the vessel" was too broad in meaning and could be interpreted to make the master negligent for any mishap while underway.

The conflicting views presented in these comments as to the specific responsibilities of the master regarding the verification of the stability of the vessel exemplifies the need for this provision. The responsibility for the stability of a vessel rests at all times with the master of that vessel. In the past, this policy has been promulgated only by the placement of a generic statement in the vessel's stability documentation. Sections 35.20–7, 78.17–22, 97.15–7, 109.227, 167.65–42, 169.840, 185.20–5, 196.15–7 now clearly delineate this long-standing policy.

(5) One comment objected to the stability verification provision because at no time does the person in charge of their company's vessels ever operate without being in compliance with the operating manual, stability letter, and certification requirements. Two comments stated that this provision was superfluous because their vessels are always operated in compliance with the regulations. Three comments stated that too much detail needs to be verified for every occurrence requiring stability verification of a MODU. Furthermore, the master has more important things to do than verify something already confirmed.

The purpose of the provision is to state clearly the master's responsibilities with regard to the stability of the vessel, not to impose additional duties which would go beyond those expected of a prudent master or operator. If, as the comments state, their company's vessels are only operated in compliance with all stability requirements, then they are essentially stating that they already verify each vessel's stability. Therefore, this provision would not require anything more of the master. However, if the master thinks verifying the vessel's stability is unnecessary and merely assumes the vessel is in compliance with its stability limitations, then the Coast Guard does not agree that the requirement is superfluous. The master must actually verify the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as applicable, and then so attest in the vessel's logbook, as required. The Coast Guard agrees that the master has many other important things to do; however, ensuring the stability of the vessel is equally important as other duties with respect to the safety and seaworthiness of the vessel.

(6) Two comments objected to specific log entries for stability verification as it would establish a hierarchy and would reduce the importance of a master's job down to responsibility for a log entry. One comment objected to the logging of the stability verification because logging duties do not enhance the safety of a vessel. Another comment objected to the stability logging because the superfluous paperwork will distract the attention of operators and will denigrate safety. Four other comments stated that this logging requirement would become a check mark or rubber stamp entry, especially on small passenger vessels and ferries on short runs over dedicated routes.

A very important part of a master's job is making the log entries required by the regulations. Log entries required of a vessel master serve much like the checklist used by an airline pilot and function as a reminder of important duties that must be performed to ensure safety. The Coast Guard agrees that all log entries, from fire drills to stability verifications, may achieve a higher importance in the mind of a master than other duties not required to be logged. This is as it should be. A log entry, even if it is a rubber stamp or a check mark, requires that a master consider the action or condition being confirmed. It is the Coast Guard's position that the safety of a vessel is enhanced if the vessel's master considers and confirms significant actions by the use of log entries. The masters of ferries and small passenger vessels on short runs over dedicated routes are equally responsible as masters of larger vessels on longer and more varied routes. All masters must ensure the safety of their vessel on each and every voyage even if the voyage is of short duration and over a familiar route.

(7) One comment stated that all log book entries for MODUs should be together in § 109.433.

The requirement for a log book entry is already located in § 109.433. The detailed description of the requirement is in a separate section similar to all other log book entries required of MODUs and other vessel types. A reference to § 109.227 has been added to § 109.433.

(8) One comment stated that in his duty as master of a containership in the U.S.-South America trade, he could not always comply with the stability verification requirement. Containers are not weighed in many ports. The container weights are often estimated by shippers and since freight is paid by weight, shippers often underestimate the weight of their containers. In general, the comment stated that the inability of the master to accurately know the loading of the vessel is a dangerous reality without a mechanism to verify container weights. The comment concluded that this situation could lead to a stability related casualty.

The Coast Guard agrees that there is a problem with underestimated container weights at foreign ports. The problem of underestimated container weights is indeed a serious international problem and it has been broached in the IMO. This practice has not been a major problem in U.S. ports as most containers are weighed at the port or their weight is documented at weigh stations along a truck's route to a port. This problem is an international one and a viable solution to this problem must be pursued through an international venue such as the IMO. A solution to this problem is beyond the scope of this particular regulatory project. Current IMO work on development of an intact stability code for all ships might help raise the importance of this issue on the IMO agenda and ultimately lead to a solution to the problem. While awaiting a definitive solution to this problem, a prudent master who doubts the information provided on the loading of a vessel should ensure that a margin of safety is included in the evaluation of the stability of the vessel.

(9) Two comments stated that stability reports are required as a company policy from their MODUs on a more frequent basis than every 6 months. Also, one comment said stability records are kept on board until they are deemed no longer useful. One comment suggested that records for MODUs be retained only until a major change takes place (such as a new location). The comment noted that six month's worth of records is a major amount and this requirement will cause duplicative paperwork to be manufactured for a company's shore office.

Because MODUs do not make voyages similar to other marine vessels, the Coast Guard decided that a definite period of time for retaining records was more meaningful. Six months was arbitrarily chosen. There are two specific purposes for retaining these records:

(a) The records are useful in monitoring the changing stability condition during a voyage or on a location; and

(b) The records are useful during an investigation of a casualty. In response to these comments, the length of time for retaining the stability records on board MODUs has been reduced to one month or until the MODU changes location, if shorter.

(10) One comment noted that it is difficult to maintain any type of records for unmanned barges.

The Coast Guard agrees with the comment that there are some problems maintaining records on unmanned barges especially where a log book is not required. In consideration of this comment, unmanned barges not now required to have a log book, will be exempt from the logging requirement of § 35.20–7 and § 97.15–7. However, all unmanned barges are still required to comply with the stability verification and with the logging of the verification where the unmanned barge already carries a log book. Appropriate changes have been made.

(11) Two comments noted that responsibility for the logging of stability verification of unmanned barges must be placed with a specific individual-tankerman, operator of the towing vessel, or person in charge, because there is no "master" of a barge.

The Coast Guard agrees and has clarified § 35.20–7 and § 97.15–7 by placing responsibility for this provision with the person in charge.

(12) One comment stated that while the stability verification could be easily achieved by offshore tank vessels required to have load lines, in order for inland tank barges to comply, changes will be needed in the stability information listed on the Certificate Of Inspection (COI). For example, current Coast Guard policy requires that the COI for Liquified Flammable Gas barges itemize each separate cargo by draft restrictions. The limitations are usually dependent on cargo weight rather than meeting the Type II damage stability criteria and are, therefore, listed in fraction of inches. The comment suggested only one draft be put on the COI based solely on Type II damage stability approval.

The purpose of this regulatory project is not to change the manner in which a cargo is carried or to change the allowed amount of any type of cargo carried. The Coast Guard has determined that those tank barges which have draft restrictions on their COI for purposes other than stability will be exempt from the requirements of § 35.20–7.

Draft Marks

(13) Five comments stated that the terms "bow draft" and "stern draft" are useless for most mobile offshore drilling units (MODUs), since many MODUs do not have a "bow and stern" draft.

The Coast Guard agrees that for some MODUs bow and stern drafts are meaningless terms. An appropriate allowance for non-surface type MODUs has been made to § 108.661(e).

(14) One comment noted that a provision should be made to exempt vessels, such as ferries on short runs not loaded near their operating capacity, from the requirements for draft indicators.

The reasoning behind this comment is not well understood. No assurance be given that a ferry on short runs will always operate with a load below its allowed capacity. Also, even assuming some type of assurance is given that all operations will be kept below operating capacity, no assurance can be given that these vessels are not improperly loaded or not overloaded, or both, if no attempt is ever made to verify the true draft.

(15) Two comments questioned where the requirements for draft markings on small passenger vessels were published.

Proposed requirements for draft marks on small passenger vessels were published in a Notice of Proposed Rulemaking on January 30, 1989 entitled Small Passenger Vessel Inspection and Certification (54 FR 4412) in proposed § 185.602. This publication location was noted in the NPRM for this rulemaking.

(16) One comment noted that the wording requiring that each vessel "be marked with its draft" was unclear and suggested rather that each vessel "be marked with draft marks."

The Coast Guard agrees with this comment. The wording has been clarified in § 32.05–1, § 78.50–10, § 97.40–10, § 167.55–1, § 169.755, and § 196.40–10.

(17) One comment recommended a requirement that the trim and stability book be drafted in units (metric or English) consistent with draft marks.

The Coast Guard agrees with the comment that the trim and stability book and all other stability information provided must agree in units with the draft marks. Section 170.110(d) has been revised to reflect this.

(18) One comment asked for clarification of wording "where draft marks are obscured." The comment asked from where should the draft marks be able to be viewed, from on board or on the dock. One comment stated that draft sensors are not the optimum method for determining unsafe stability conditions on MODUs. The comment added that draft marks are usually visible from some point on every rig and that visual observation is better than remote indicators. Another comment stated that on every type of MODU design a situation may exist where the draft marks are obscured by operational constraints or by protrusions. Therefore, exactly when a draft indicating system is to be required must be clarified. Two other comments stated that while draft indicating systems are okay, reliance on remote systems should be avoided and that draft marks should be the primary indicator of a MODU's draft. The comment stated that MODU level indicators serve better as a warning of something amiss rather than as a reading of the draft.

The draft marks must be readable when viewed from a reasonably convenient position. If the draft marks cannot accurately be read from the dock or on board the vessel, then the draft marks are "obscured" and another method for determining the draft of the vessel must be provided. Draft indicators are to be required only on those vessels that cannot read their draft visually and therefore, the crew must guess the vessel's draft. If the master cannot calculate the stability of the vessel because the draft cannot be read, then it follows that compliance with the applicable regulations is indeterminable. The Coast Guard is holding the master responsible for showing compliance with the applicable regulations, which is integral to the safe operation of the vessel.

Stability Books

(19) Two comments requested confirmation that § 170.110 does not apply to MODUs.

The comments are correct. The format and requirements for MODU operating manuals, which include stability data, are covered by § 109.121.

(20) One comment noted that previously approved (pre-computer age) vessel stability booklets did not encompass the entire range of a vessel's operating trims. The comment requested clarification of the applicability of this provision to existing vessels.

Vessel stability booklets should agree with the current condition of the vessel. Existing vessels built after 1984, which is the effective date of this subchapter, should already have stability books that take into consideration the entire range of a vessel's operating conditions. Existing vessels built prior to 1984, whose stability information is revised due to the requirements of § 170.210, should at that time update the stability information, in accordance with § 170.110, to encompass the entire range of operating trims.

(21) One comment recommended that the word "intact" be added to the phrase "stability of any condition" since damage stability calculations are too numerous for the stability book and are better evaluated by computer.

The Coast Guard agrees with this comment and the clarification has been added to § 170.110.

Periodic Lightweight Verification

(22) Two comments objected to the lightweight verification, reasoning that the Coast Guard could not definitely specify that adherence to the requirement for lightweight verification would have avoided casualties. One comment objected to this provision as ineffective and costly. One comment stated that while the rest of the proposed regulations will be effective in promoting vessel safety, a 5-year deadweight survey was not warranted. One comment stated that owner certification at 5-year intervals showing that no changes have been made should be sufficient. The comment elaborated that a deadweight survey on a shallow draft vessel, like Great Lakes vessels, requires perfect weather and precise draft measurements, and is a costly and unnecessary procedure.

The Coast Guard does not concur with these comments. The cost and effectiveness of this rulemaking is examined in the economic analysis of the regulation, which includes data from recent stability related casualties. It is rare that a single identifiable hazard is the sole cause of a stability casualty; however weight growth has been identified as a contributing factor. The owner of a vessel can certify that no modifications have taken place, but cannot certify without a survey that no weight growth has occurred on the vessel due to other causes. Weight growth is due not only to minor modifications, which are not required to be reported by § 170.005, but also by the untracked addition, deletion, and relocation of weight aboard the vessel. Without the 5-year deadweight survey, the owner may not be aware of the extent of the weight growth aboard the vessel.

(23) Several comments questioned the applicability of a periodic deadweight survey to MODUs because—

(a) They do not know of any widespread problems, and

(b) MODUs are not like passenger vessels because few are self-propelled. Two comments stated that MODU operating manuals closely monitor weight changes. One comment suggested that the operating manual should serve as the triggering device for a deadweight survey as calculated lightweight additions are more accurate than a periodic deadweight survey. One comment stated that changes to a MODU's lightship are required to be documented. The comment further suggested that rather than arbitrary deadweight surveys, inspectors should pay more attention to the records kept (stability calculations and lightweight adjustments) and a deadweight or incline should then be required when deemed necessary. In this fashion, operators who maintain good records and strive for safety are rewarded by this provision. Another comment stated that jack-ups are stable during operations and when floating no significant amount of weight is put on or off the unit. One comment proposed dispensing with the deadweight survey when a single discrete item, which causes a greater than 2 percent change in lightweight, is added as long as its weight and centers of gravity are well-established. One comment stated that when the Coast Guard conducts on-site inspections, they allow a 3 percent change in lightship before requiring a re-incline.

The Coast Guard agrees that the hull form of some MODUs is very dissimilar to that of passenger vessels. However, hull-form is unrelated to weight growth. As required by § 109.121(c)(5), a MODU operating manual must include the lightweight data along with a listing of inclusions and exclusions of semipermanent equipment. This section also requires that the operating manual contain guidance for the routine recording of lightweight alterations. However, no specific requirements on the actual recording of lightweight alterations are given. Therefore, the type and amount of records maintained on lightweight changes will vary among operating companies. While some operators will try to be diligent and track all known weight changes, other operators will track only those changes they think will effect their lightweight. Even for prudent operators, some weight growth will go unrecorded because of the nature of the problem itself. Weight growth does not result from recordable

modifications to a vessel. Weight growth is the unnoticed accumulation, deletion, or relocation of small amounts of weight, such as dunnage, waste, paint, redecoration, disused but not discarded equipment and spare parts, sludge, and similar materials. These changes can, over a period of time, effect the lightweight displacement and the centers of gravity of a vessel. Although good records will not exempt a vessel from doing a deadweight survey, they may prevent the necessity of an incline. Only where the survey shows that the change exceeds the documented modifications by more than the tolerance allowed in § 170.210, will an incline be required.

The MODU Code recognizes the importance of periodic lightweight verifications in section 3.15, which requires a 5-year periodic deadweight survey for all column stabilized units. The Coast Guard acknowledges that column stabilized units are much more vulnerable to unknown weight changes than self-elevating units. Therefore, the Coast Guard will only require owners of self-elevating units to re-incline after a major modification. Although, data from re-inclinings of jack-up rigs shows a large discrepancy in the vertical center of gravity (KG) from one incline to the next, no cause has been singled out for the variation in KG. Some operators believe inaccuracies during the incline test cause the different results. However, the Coast Guard's position is that the change in KG is in some part attributable to weight changes which have not been recorded. One of the major unrecorded weight changes made on a jack-up rig is leg-lengthening. The Coast Guard considers changes such as leg-lengthening to be a major modification, which must be reported as required by § 170.005. Since the Coast Guard has decided that self-elevating MODUs, such as jack-ups, will not at this time be required to comply with § 170.210, an appropriate exemption has been added to § 170.210(b).

(24) One comment stated that all inspected vessels have load lines and load lines prevent overloading. The comment concluded this rule serves no purpose.

Not all inspected vessels have a load line. Only specific vessel types as defined by 46 CFR subchapter E, part 42, subpart 42.03 are required to have a load line. Many inspected vessels are not required to have a load line due to their size, route, type of service, or other factors. In addition, load lines do not compensate for weight growth of lightship or a change in KG.

(25) One comment stated that use of the draft marks to determine weight growth should be examined. Another comment recommended the use of a formal weight tracking system in conjunction with observed drafts to determine the necessity for deadweight surveys. Another comment stated that the updating of weight and centers of gravity is reasonable to prove continued adequate stability and is more accurate than a periodic lightship check for Great Lakes vessels. One comment stated that a more reasonable approach is needed for reporting and certifying centers of gravity and weights due to minor modifications occurring over a 5-year period. Consistent with current regulations, significant weight changes due to modification should and must be identified by deadweight surveys and inclines. One comment stated that their company already adjusts trim and stability books for minor modifications and conducts stability tests for major modifications.

Monitoring the location of the draft is not a solution to tracking weight growth because the deadweight constantly changes. Draft marks and load lines are a good indicator of overall overloading of a vessel but a poor indicator of weight growth. While the addition, deletion, or relocation of unknown weights may or may not cause a noticeable change in the draft or the submergence of the load line, the stability of the vessel could be greatly reduced by the changes. As already stated, pursuant to § 170.005, significant alterations to a vessel are required to be reported and stability information updated in accordance with the regulations in 46 CFR subchapter S. Those operators and owners who track other known weight variations on their vessels and consistently update their stability information are in the minority and are to be commended. However, even the most diligent are likely to miss some of the weight growth occurring on their vessel.

(26) Two comments objected to the proposed regulations applying to Great Lakes vessels because:

(a) SOLAS does not apply to the Great Lakes;

(b) Great Lakes vessels have a substantial excess of metacentric height (GM);

(c) No initial stability test is required; and

(d) Great Lakes vessels do not have a stability book. Another comment also stated that Great Lakes dry bulk vessels are designed such that no inclining tests are required. Another comment stated that Great Lakes bulk carriers should be exempt from this provision because their operation requires GM in excess of Coast Guard requirements and significant alterations are completed only with Coast Guard approval. One comment stated that Great Lakes vessels are limited by shallow drafts (river transits) and narrow locks which result in vessels with excess GM. Because of this excess in stability, these vessels have always dispensed with stability tests as permitted by § 170.175(d). Another comment stated that all of the following vessels should be excluded from this requirement:

(a) Vessels that could use (not just those that did use) the estimated center of gravity;

(b) Vessels that are considered inherently stable (where no stability calculations were performed); or

(c) Vessels that have a large margin between the operating conditions and the stability criteria (some vessels may have undergone significant changes and still meet the criteria by a wide margin). One comment recommended that for a vessel that is "bare bones" (not lavishly outfitted, built for a specific function, such as a tank ship, tank barge, bulk cargo barge, or deck cargo barge), some latitude be included to allow the Officer in Charge, Marine Inspection (OCMI) or the Commanding Officer, Marine Safety Center to make a judgment when determining whether a vessel needs a periodic survey.

The Coast Guard does not intend that vessels which are not now required to do a stability test, do one periodically. Vessels exempt from stability tests by § 170.175(d) are either inherently stable or have a wide margin between their operating conditions and the stability criteria. Vessels exempt from stability tests by § 170.175(d), are also exempt from § 170.210. An appropriate change has been made to § 170.210(b) to make this clear. The Coast Guard also agrees that some "bare bones" vessels are constructed or operated such that a significant amount of weight growth cannot occur. However, the Coast Guard does not consider it appropriate for this regulation to allow latitude to the OCMI or Commanding Officer, Marine Safety Center in determining whether or not a vessel needs a periodic survey. However, those vessel types that can clearly be defined as "bare bones" vessels will be exempted from the lightweight verification provision. An appropriate change has been made to § 170.210 to permit this exemption.

(27) One comment stated that § 170.210(b)(1) is redundant since lightweight displacement and centers of gravity are not required to be determined for these vessels by § 170.174.

The Coast Guard concurs with this comment, however, for clarity, all exceptions will be listed in § 170.210, including small passenger vessels using the simplified stability test.

(28) One comment noted that § 170.210 would apply to new and existing vessels but § 170.001 limits application of 46 CFR subchapter S to vessels contracted for after January 3, 1984.

As stated in the NPRM, application of § 170.210 is for all existing inspected vessels. Sections 170.001 and 170.210(a) have been changed to clarify that application of § 170.210 is for all existing inspected vessels. The Coast Guard intends to phase-in the requirement for periodic lightweight verification over a five year period. For each affected vessel, the date by which its initial periodic lightweight verification must be carried out will be determined by a number of factors, including the date of the vessel's last lightweight verification, the date of the vessel's next credit drydocking, and the expiration date of the vessel's Loan Line Certificate. The Coast Guard intends that this verification be completed in conjunction with other required surveys to try to avoid a vessel being taken from service solely to perform the lightweight verification. The Coast Guard will publish a Navigation and Inspection Circular containing specific guidance on the phase-in process.

(29) Two comments disagreed with the presumption that vessels using the simplified stability test should be excluded from the periodic lightweight requirement as these vessels, especially the older ones, are subject to substantial weight growth.

The Coast Guard cannot currently disagree with these comments. Additional study of small vessels that use the simplified stability test is necessary to determine if their operations result in a significant amount of weight growth. At this time, this rulemaking does not apply the periodic lightweight verification to these vessels.

(30) Two comments noted that vessel owners do not have rights to the stability related plans of their vessels and if redrawn plans are used, differences in vessel characteristics could result from differences between the old and new plans and not from any changes in the vessel. One comment noted that the cost of redoing the plans is $4000–$6000 and is costly for the prevention of weight growth, as compared to a major modification, such as a conversion. Another comment stated that no costs were estimated for reconstructing the data for vessels where such data has been lost or destroyed or where the original data is in error. One comment stated that 30 percent of Coast Guard approved lightship data is wrong and trying to use this data for comparison is an unnecessary hardship. One comment asked for clarification of the criteria, original or present, applied in reevaluating a vessel's stability, when a vessel is found to have changed its characteristics. The comment also questioned what criteria would be applied if the original criteria cannot be determined.

Purchase of relevant vessel plans is negotiable with the naval architect at the time of build or purchase of the vessel. Every owner can expect a vessel to undergo some degree of modifications, improvements, or repairs sometime during the vessel's life that would require having a set of the vessel's plans. If the vessel owner does not choose to buy the plans for the vessel at the time of build, the owner can usually return to the same naval architect when further improvements, maintenance, or repairs are done on the vessel. Owners purchasing a vessel sometime after build must also figure into the purchase the costs of the plans for the vessel to carry out improvements, maintenance, or repairs. Therefore, costs for vessel plans are not included as a cost associated with this regulation.

The Coast Guard cannot confirm the comment's statement that 30 percent of Coast Guard approved lightship data is wrong without rechecking the data for all vessels. These periodic checks will ensure that future lightship data is correct which will allow the master to be more certain of the stability of the vessel. If during a survey or incline a vessel is found to have made unreported major modifications, the vessel will be required to follow the policy of major modifications and meet the rules in force at the time of modification. If changes in vessel lightweight are due only to weight growth or minor modifications, the vessel will only have to meet the criteria under which it was originally certificated. Instances where the original criteria cannot be determined are few and will be resolved on a case-by-case basis as is done now.

(31) Several comments objected to the periodic lightweight verification because regulations already preclude an owner from making any modifications without approval and, if needed, stability review. One comment suggested that the OCMI should have the authority to determine whether an inland ferry vessel needs a periodic stability test. Another comment stated that OCMI's already have the authority to require deadweight surveys, revised stability calculations and stability tests. The comment further stated that better guidance as to when new tests should be done is better than wholesale requirements for all vessels to do deadweight surveys.

Currently, there are only regulations concerning updating of stability information after major modifications. Coast Guard policy and procedures which require updated stability calculations and stability tests when minor modifications alter stability condition vary between districts. This requirement will ensure a more uniform application of lightweight verification policy and procedures.

(32) One comment stated that the horizontal centers of gravity (transverse and longitudinal centers of gravity) is more appropriate for some MODUs.

The deadweight survey is only a "litmus test" which indicates changes may have taken place with the vertical center of gravity. An incline would be required only if the lightweight or horizontal centers of gravity are incorrect.

(33) One comment questioned the need for a deadweight survey of cargo ships every 5 years. One comment recommended that all tankships be exempt from this requirement, except when modifications change the lightweight by more than 2 percent. Two comments stated that on passenger ships, lightweight could be as much as 80 percent of the fully loaded displacement, while on oceangoing cargo ships, lightweight was only as much as 35 percent of the fully loaded displacement. Because of this, changes in lightweight have a significantly smaller effect on large cargo ships. One comment objected to the application of this provision to barges because there is no evidence that periodic verification will result in fewer barge casualties. The comment added that lightweight is a minor part of cargo barge stability. Two comments stated that with the exception of pure car carriers, inspected cargo vessels have less superstructure and fewer upper decks than passenger vessels. The comment concluded that the location on most oceangoing cargo ships where spare parts, slops, or minor modifications will reside is generally closer to or below the vertical center of gravity and, therefore, this weight growth will not detrimentally impact overall stability.

After reviewing the arguments and data provided by these comments, the Coast Guard agrees that vessels such as deep draft cargo ships and tankers should not be subject to this provision. Vessels certificated under Subchapter I

and Subchapter D whose lightweight displacement comprises less than 35 percent of the total fully loaded displacement will be exempt from the provisions of § 170.210.

(34) One comment requested a public meeting with operators to discuss the necessity of lightweight verification if it is required for large cargo vessels. Of the twenty-eight comments, only one requested a public meeting.

The Coast Guard decided that a public hearing was not necessary because the concerns addressed in this letter were resolved in this rule. Cargo ships whose lightweight displacement comprises less than 35 percent of the total fully loaded displacement will be exempt from the provisions of § 170.210.

(35) One comment stated that the periodic lightweight verification provision provided no guidance on what stability study is necessary when deviation is greater than the allowable change in § 170.210(a)(3). The comment assumed that new stability information in line with § 170.110 would be established using the new lightship data.

The Coast Guard intends that the stability information used on board a vessel agree with the vessel's lightship data. Section 170.210(a)(3) has been clarified to ensure that when a new stability test is required, updated stability information will be provided on board the vessel for the master's use.

(36) Several comments stated that to perform the proposed surveys everything must be removed from the vessel (ballast, fuel and lube oils, mud and sediment, tools and spare parts, food and perishables, all outfitting such as utensils, linen, and similar items) and as a result, the items removed from the vessel will be subject to theft, contamination, and spillage at an estimated cost of $45,000 to $120,000 for an offshore supply vessel (OSV). Another comment stated that it would cost an oceangoing cargo ship approximately $50,000 dollars to comply with the periodic lightweight requirements. One comment stated that to comply with this provision their ships would have to be stripped of cargo and tankage, and taken out of service. One comment stated that a minimum of 24 hours is required to prepare their oceangoing cargo ships for a deadweight survey. One comment estimated that at least three days are required for an OSV to perform the lightweight verification.

It is not always necessary for all the items stated by the comment to be removed to complete a deadweight survey. It is necessary, however, to record the weight and location of each item not part of the lightweight. The time and dollar amounts quoted by two of the comments are inconsistent. The average of $85,000 and 3 days for an OSV as compared with $50,000 and at least 1 day for an oceangoing cargo ship is incongruous. However, where appropriate, cost analysis estimates in the regulatory evaluation associated with this rulemaking were increased in response to these comments.

(37) One comment stated that the 2 percent margin is:

(a) Inconsistent with other margins of error intrinsic to calculating stability and is therefore unreasonable;

(b) An insignificant number in terms of an OSV's stability because OSV's are so small;

(c) Not necessary because there are safety factors built into a vessel's stability letter; and

(d) Insignificant because over a vessel's life, the vessel is allowed a 20 to 30 percent change due to wastage, paint, coatings, damage repairs, equipment replacement, scale, and sediment.

Another comment stated that initial inclines are done with dry tanks and therefore, after tanks are used, initial conditions are hard to repeat. The comment concluded that stability rules take this into consideration by applying safety factors and margins for error, and therefore, 2 percent is a close tolerance to meet. One comment stated that the margin of safety is greater than 2 percent because of the application of safety factors during the calculation of an OSV's stability from an incline and in preparation of the stability letter. This comment further stated that the margin of error, calculated or empirical, in a lightship survey is greater than 2 percent and the tolerance between the 2 percent lightweight verification margin and the margin of error of the incline is too tight. One comment agreed that the requirement for periodic deadweight surveys was reasonable, but thought that the 2 percent margin was unreasonable. Another comment stated that the results of the survey would likely exceed the 2 percent tolerance due to inaccuracies in the survey. Another comment recommended that in lieu of the 2 percent lightweight displacement margin, that 1 percent of lightweight displacement plus the maximum tons per inch (TPI) immersion be used. The comment stated that maximum TPI should be the larger of the TPI at the original inclining draft or the later deadweight draft. This method would permit a 1 percent increase in weight plus a 1 inch error in determining the drafts. The comment asserts this is a fairer standard than the 2 percent margin.

Coast Guard regulations set minimum standards for safety. The criteria in the regulations are developed with safety in mind, but a determinable and set factor of safety is not used in the calculations. Conditions placed in a vessel's stability letter are usually those necessary for a vessel to comply with the minimum stability criteria. These conditions are not additional factors of safety. The Coast Guard's position is that the 2 percent tolerance is reasonable and achievable. A 30 percent weight change over a vessel's life without a stability review is unacceptable. The Coast Guard does not agree that the margin of error during an incline is greater than 2 percent and the Coast Guard uses procedures to ensure a credible incline. The comment's suggestion to apply TPI immersion in conjunction with displacement changes could be applied as an alternative on a case-by-case basis.

(38) One comment questioned whether a class of sister ships, certified as having identical modifications and operations, could use a single periodic lightweight verification for the entire class.

Although a class of sister ships can be identical when new, the weight growth experienced by each ship will in all probability be unique. The changes in the amount and location of paint, dunnage, abandoned tools or equipment, increased stores, furnishings, and similar items will vary from ship to ship and only by checking each ship can the true lightweight be verified.

Residual Stability for New Passenger Vessels

(39) Two comments stated that for government contracted ships, the contract award date is so far in advance of the keel laying date that for ships already contracted a new costly redesign will be needed. The comment asked whether the effective date of 29 April 1990 could be a contract date rather than keel laying date.

The effective date of the provisions of § 171.080 for domestic vessels will be keel laying dates after December 10, 1992. Over 2 years will have passed from the effective date of the SOLAS Convention amendments to the publication of this Final Rule. This has allowed more than enough design lead time, even for government vessels. The effective date for vessels requiring a SOLAS safety certificate is set by the IMO. Under SOLAS, all vessels subject to the SOLAS requirements whose keels were laid after 29 April 1990, must comply with the residual stability amendments.

(40) One comment said that the proposed residual stability standards

were too stringent for vessels engaged in river service. The comment specifically objected to the 15 degree range of stability and the assumption that all persons will move to the low side in the case of asymmetrical flooding.

The range of stability after damage is a minimum acceptable for all vessel services, including vessels engaged in river service. Coast Guard regulations set minimum standards for safety, and in determining compliance with these regulations, a worst case scenario is assumed. It is unreasonable to assume passengers will move in a manner beneficial to the stability of a vessel.

(41) One comment requested that this section specifically exempt Great Lakes dry cargo vessels since these vessels are already subject to the damage stability regulations in 46 CFR part 172, subpart H.

This section is applicable to new passenger vessels and other vessels required to comply with § 171.080. Since this section does not apply to Great Lakes dry cargo vessels, an exemption is not required.

(42) One comment questioned the origin and basis of the 7 degrees of heel in the final stage of flooding.

A limitation on heel for unsymmetrical flooding was first used in the International Convention for the Safety of Life at Sea, 1948. The 7 degree limitation on heel for one compartment flooding and twelve degrees for two-compartment flooding is contained in IMO Resolution A.265, Equivalent Regulations to part B of chapter II of SOLAS on Subdivision and Damage Stability of Passenger Ships (adopted by IMO in November 1973). The 7 degree limitation is located in Chapter II–1, Regulation 8.6.2 of SOLAS and in 46 CFR 171.080(d).

(43) One comment questioned why oceanographic research vessels (ORV) are required to meet passenger vessel regulations. The comment questioned whether ORVs should have separate damage stability regulations.

ORVs include a number of non-seaman on board during each voyage. These non-seamen are usually scientists and technical personnel and are more closely related to the definition of passengers than the definition of crew. While these non-seamen are necessary to accomplish the vessel's mission, they do not have the familiarity with the vessel or the training in emergency procedures that members of the crew have. Therefore, the Coast Guard requires in 46 CFR part 173, subpart D that all ORVs, except barges under 300 gross tons, comply with the passenger vessel damage stability regulations.

(44) In § 171.080(e)(2), the word "accessible" replaced the word "frequented" as a more definite term.

(45) The existing provision in § 171.080(d)(3) regarding the submergence of the margin line was inadvertently left out for new vessels. For equivalency with the current SOLAS passenger ship damage stability requirements, the margin line must not be submerged at any point in the final stage of flooding. An appropriate change has been made to § 171.080(e)(6).

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation Regulatory Policies and Procedures (DOT Order 2100.5 of May 22, 1980). A Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The marine industry will incur an estimated first year cost of $5 million and a subsequent annual cost of $4.8 million as a result of this rulemaking. Although this cost may be sizable for some segments of the industry, the need for and potential benefits of the regulations are considered to outweigh the anticipated costs involved.

As discussed in "Discussion of Comments", in response to the few specific comments given on costs of the periodic lightweight verification, the costs have been adjusted. Also, in response to some comments, the costs has been lowered due to the decrease in the number of vessels affected by some of the provisions; for example, the periodic lightweight verification.

The primary benefits of the regulations relate to increasing the accuracy of the available stability information and vessel survivability after damage thereby producing a safer vessel and reducing the number of stability related casualties and resulting lives lost, associated injuries, and property damage. The minimum potential benefits of these regulations are estimated to be $8.4 million annually based on the generally accepted value of human life of $1.5 million. However, this estimate does not take into account the potential substantial additional benefits derived from averting a catastrophic casualty, such as occurred with the HERALD OF FREE ENTERPRISE. When taking into account major casualties such as the HERALD OF FREE ENTERPRISE, the potential benefits of these regulations, in terms of lives saved, far outweigh associated costs.

Small Entities

One comment objected to the conclusion that the rules would not have a significant impact on a number of small entities as a large part of the U.S. small passenger fleet are owned by small and family businesses. The comment stated that small passenger vessels would reap little of the benefit as small passenger vessel losses are few and not multi-million dollar cases.

The small entities addressed in this rulemaking are primarily small passenger vessels. The small passenger vessel fleet, which is regulated under 46 CFR subchapter T, can be roughly subdivided into large vessels (generally greater than 65-feet in length and authorized to carry more than 150 passengers per voyage) and small vessels (generally less than 65-feet in length and authorized to carry fewer than 150 passengers per voyage). There are currently about 4000 small and 1200 large vessels in the small passenger vessel fleet. A large percentage of the small vessels in the small passenger vessel fleet are owned or managed by small entities. A lesser percentage of the large vessels in the small passenger vessel fleet are owned or managed by small entities.

This rulemaking can be subdivided into five major categories, each having a different impact upon small entities;

(a) Draft marks;

(b) Closing of loading doors;

(c) Verification of stability;

(d) Residual stability; and

(e) Periodic lightweight verification.

With regard to the draft requirement for small passenger vessels, § 185.30–3 (proposed § 185.602(b)) limits the requirement to those vessels described by § 185.30–3(a) (proposed § 178.310(b)(1) through (5)). This section limits the applicability of the draft marks requirement to vessels greater than 65-feet in length, sailing vessels, vessels authorized to carry more than 150 passengers, vessels authorized to carry more than 12 passengers on an international voyage, or a vessel with more than one deck above the bulkhead deck exclusive of a pilot house. The requirement in § 185.30–3(e) is limited to those vessels whose draft marks, required by § 185.30–3(a) (proposed as § 185.602(b)), are obscured from view. The various exemptions from the requirement for draft marks greatly reduces the number of vessels affected. Most large vessels and many small vessels in the small passenger fleet already have the draft marks required here. Of those vessels required to have draft marks, very few do not already

have them. The Coast Guard estimates that only about 75 small passenger vessels will need to add draft marks.

With regard to the closing and logging of loading doors, very few small passenger vessels are equipped with these types of loading doors. At most, the Coast Guard estimates that 150 small passenger vessels will have to comply with this provision. Additionally, the logging provision is dropped for those vessels not already required to carry a log book. It is estimated that at least half of the small vessels in the small passenger vessel fleet are not required to carry a log book.

With regard to the stability verification and logging, the majority of small passenger vessels carry a simple stability letter, which allows quick and easy verification of their vessel's loading and stability. Also, as mentioned previously, the logging provision is dropped for those vessels not already required to carry a log book and it is estimated that at least half of the small vessels in the small passenger vessel fleet are not required to carry a log book.

With regard to the new design requirements for residual stability, this provision affects new passenger vessels only and as such, only affects about 25 new small passenger vessels that are built each year.

With regard to the lightweight verification provisions, most small vessels in the small passenger vessel fleet will be exempt from this provision through their use of the simplified stability test. Many of the large vessels in the small passenger vessel fleet affected by this provision will be able to conduct their survey dockside during normal off-working hours.

The Coast Guard's position is that while the overall safety record of the U.S. small passenger fleet is laudable, considering the number of passengers carried each year, the true economic benefit of these regulations is in removing a hazard and thereby preventing the severe loss of life which could result from a single catastrophic casualty. Although property damage resulting from a small vessel casualty may not be substantial, the loss of passengers' lives can easily result in a multi-million dollar casualty. The two most expensive provisions of this rulemaking are the periodic lightweight verification and the stability verification and logging. For small passenger vessels, the periodic lightweight verification is estimated to cost $450 a year per affected vessel and the stability verification, $268 a year per affected vessel. These costs can be recovered by a very minimal increase in cost in passengers. The potential benefits of the provisions, in terms of lives saved and in preventing a major casualty, for outweigh the associated costs.

Because of the numerous exemptions, exceptions and limits of applicability to small passenger vessels in these regulations and the true economic benefit of preventing a catastrophic casualty, the Coast Guard has determined that this rulemaking does not have a significant economic impact on a substantial number of small entities. Therefore, the Coast Guard certifies 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

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This rule contains collection of information requirements in the following sections: 35.20–7, 78.17–22, 78.17–33, 97.15–7, 97.15–17, 109.227, 167.65–38, 167.65–43, 169.840, 170.210, 185.20–5, 185.20–17, 196.15–7, 196.15–18.

The reporting and recordkeeping requirements associated with this rule have been approved by OMB in accordance with 44 U.S.C. chapter 35 under OMB Control Number 2115–0589.

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 regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rulemaking establishes stability design and operating standards for commercial vessels. The authority to regulate concerning these standards for commercial vessels in all navigable waters of the United States is committed to the Coast Guard by Federal statutes. Furthermore, since commercial vessels tend to move from port to port in the national and international marketplace, safety standards for commercial vessels should be of national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends this rule to preempt state action addressing the same subject matter.

Environment

This rulemaking has been reviewed by the Coast Guard and it has been determined that it will not have a significant impact on the environment. This rulemaking has no effect upon the manner in which potential pollutants or hazardous materials are carried on board vessels. Improved vessel stability should reduce the number of uncontrolled releases of pollutants or hazardous materials into the environment resulting from vessel casualties. However, based on a review of historical data, the Coast Guard considers the benefit to the aquatic environment to be insignificant. An environmental impact statement is not necessary. A finding of no significant impact has been placed in the public docket for this rulemaking.

List of Subjects

46 CFR Part 30

Cargo Vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For reasons set out in this preamble, the Coast Guard is amending title 46, chapter I, Code of Federal Regulations as follows:

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

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

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

2. Section 30.01–2 is amended by revising paragraph (b) to read as follows:

§ 30.01–2 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 31.10–5(a)	2115–0131
§ 31.10–21	2115–0554
§ 31.10–22	2115–0554
§ 31.10–32	2115–0131
§ 31.10–33	2115–0131
§ 31.37–15	2115–0131
§ 31.40–35	2115–0131
§ 32.53–85	2115–0505
§ 35.20–7	2115–0589
§ 35.35–30	2115–0506
§ 39.10–13	2115–0505

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

3. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

4. Section 32.05–1 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 32.05–1 Draft marks and draft indicating systems—TB/ALL.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

PART 35—OPERATIONS

5. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. Section 35.07–10 is amended by redesignating paragraphs (b)(4) through (b)(9) as paragraphs (b)(5) through (b)(10), respectively, and by adding new paragraphs (b)(4) and (c)(4) to read as follows:

§ 35.07–10 Actions required to be logged—TB/ALL.

* * * * *

(b) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 35.20–7.

* * * * *

(c) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 35.20–7.

7. Section 35.20–7 is added to read as follows:

§ 35.20–7 Verification of vessel compliance with applicable stability requirements—TB/ALL.

(a) Except as provided in paragraph (d) of this section, after loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master or person in charge shall determine that the vessel complies with all applicable stability requirements in the vessels's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements..

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary.

(c) If a log book is required by § 35.07–5, then the master or person in charge must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(d) Stability verification is not required for tank barges whose Certificate of Inspection carries draft restrictions for purposes other than stability.

SUBCHAPTER H—PASSENGER VESSELS

PART 70—GENERAL PROVISIONS

8. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

9. Section 70.01–15 is amended by revising paragraph (b) to read as follows:

§ 70.01–15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 71.10	2115–0136
§ 71.50–5	2115–0554
§ 78.17–22	2115–0589
§ 78.17–33	2115–0589

PART 78—OPERATIONS

10. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Section 78.17–22 is added to read as follows:

§ 78.17–22 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

12. Section 78.17–33 is added to read as follows:

§ 78.17–33 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, located in the collision bulkhead, the side shell, or the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

13. Section 78.37–5 is amended by redesignating paragraphs (a)(7) through (a)(13) as paragraphs (a)(9) through (a)(15), respectively, and by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 78.37–5 Actions required to be logged.

(a) * * *

(7) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other time necessary to assure the safety of the vessel. See § 78.17–22.

(8) Loading doors. Where applicable, every closing and any opening when not docked. See § 78.17–33.

* * * * *

14. Section 78.50–10 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 78.50–10 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

15. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Section 90.01–15 is amended by revising paragraph (b) to read as follows:

§ 90.01–15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 91.27–13	2115–0517
§ 91.40–3	2115–0554
§ 91.40–5	2115–0554
§ 97.15–7	2115–0589
§ 97.15–17	2115–0589

PART 97—OPERATIONS

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

18. Section 97.15–7 is added to read as follows:

§ 97.15–7 Verification of vessel compliance with applicable stability requirements.

(a) Except as provided in paragraph (d) of this section, after loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master or person in charge shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not

depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary.

(c) If a log book is required by § 97.35, then the master or person in charge must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(d) Stability verification is not required for tank barges whose Certificate of Inspection carries draft restrictions for purposes other than stability.

19. Section 97.15–17 is added to read as follows:

§ 97.15–17 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated;

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, cargo, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

20. Section 97.35–5 is amended by redesignating paragraphs (a)(4) through (a)(10) as paragraphs (a)(6) through (a)(12), respectively, and by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 97.35–5 Actions required to be logged.

(a) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 97.15–7.

(5) Loading doors. Where applicable, every closing and any opening when not docked. See § 97.15–17.

* * * * *

21. Section 97.40–10 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 97.40–10 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observation. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

SUBCHAPTER I–A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

22. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; Section 107.05 also issued under the authority of 44 U.S.C. 3507.

23. Section 107.05 is amended by revising paragraph (b) to read as follows:

§ 107.05 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 107.305	2115–0505
§ 107.309	2115–0505
§ 109.227	2115–0589

PART 108—DESIGN AND EQUIPMENT

24. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

25. Section 108.661 is amended by adding new paragraph (e) to read as follows:

§ 108.661 Unit markings: Draft marks.

* * * * *

(e) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the draft can be determined.

PART 109—OPERATIONS

26. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

27. Section 109.227 is added to read as follows:

§ 109.227 Verification of vessel compliance with applicable stability requirements.

(a) The master or person-in-charge shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, operating manual, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book, at the following times:

(1) Prior to transitioning from the transit condition to the operating condition;

(2) Prior to transitioning from the operating condition to the transit condition;

(3) Prior to significant changes in deck load or ballast;

(4) At other times as required by the vessel's trim and stability book or operating manual; and

(5) At all other times necessary to assure the safety of the vessel.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be

retained on board the vessel for a one month period or until a change of location, if shorter.

28. Section 109.433 is amended by redesignating paragraphs (k) through (m) as paragraphs (l) through (n), respectively, and by adding new paragraph (k) to read as follows:

§ 109.433 Log book entries.[1]

* * * * *

(k) After loading and prior to getting underway and at all other times necessary to assure the safety of the vessel, a statement verifying vessel compliance with applicable stability requirements as required by § 109.227.

* * * * *

SUBCHAPTER R—NAUTICAL SCHOOLS

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

29. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

30. Section 167.01–20 is amended by revising paragraph (b) to read as follows:

§ 167.01–20 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No
§ 167.15–35	2115–0554
§ 167.65–38	2115–0589
§ 167.65–43	2115–0589

31. Section 167.55–1 is revised to read as follows:

§ 167.55–1 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) In cases where the keel does not extend forward or aft to the location of the draft marks, due to a raked stem or cut away skeg, the draft must be measured from a line projected from the bottom of the keel forward or aft, as the case may be, to the location of the draft marks.

(d) In cases where a vessel may have a skeg or other appendage extending locally below the line of the keel, the draft at the end of the vessel adjacent to such appendage must be measured to a line tangent to the lowest part of such appendage and parallel to the line of the bottom of the keel.

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

32. Section 167.65–38 is added to read as follows:

§ 167.65–38 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

33. Section 167.65–42 is added to read as follows:

§ 167.65–42 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

PART 169—SAILING SCHOOL VESSELS

34. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; Section 169.117 also issued under the authority of 44 U.S.C. 3507.

35. Section 169.117 is amended by revising paragraph (b) to read as follows:

§ 169.117 OMB control numbers.

* * * * *

(b) *Display.*

46 CFR part—	OMB control No.
§ 169.111	2115–0517
§ 169.201	2115–0517
§ 169.205	2115–0007, 2115–0517 2115–0546
§ 169.211	2115–0517
§ 169.213	2115–0517
§ 169.215	2115–0517
§ 169.217	2115–0517
§ 169.218	2115–0546
§ 169.219	2115–0546
§ 169.233	2115–0554
§ 169.235	2115–0517
§ 169.305	2115–0095
§ 169.509	2115–0132
§ 169.807	2115–0003
§ 169.813	2115–0546
§ 169.840	2115–0589
§ 169.841	2115–0546, 2115–0071
§ 169.857	2115–0546.

36. Section 169.755 is added to read as follows:

§ 169.755 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem

[1] **Note:** 46 U.S.C. 11301 requires that certain entries be made in an official logbook, in addition to the entries required by this section; and 46 U.S.C. 11302 prescribes the manner of making those entries.

and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) In cases where the keel does not extend forward or aft to the location of the draft marks, due to a raked stem or cut away skeg, the draft must be measured from a line projected from the bottom of the keel forward or aft, as the case may be, to the location of the draft marks.

(d) In cases where a vessel may have a skeg or other appendage extending locally below the line of the keel, the draft at the end of the vessel adjacent to such appendage must be measured to a line tangent to the lowest part of such appendage and parallel to the line of the bottom of the keel.

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

37. Section 169.840 is added to read as follows:

§ 169.840 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

SUBCHAPTER S—SUBDIVISION AND STABILITY

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

38. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

39. Section 170.001 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 170.001 Applicability.

(a) This subchapter, except where specifically stated otherwise, applies to each vessel contracted for on or after January 3, 1984, that is—

* * * * *

40. Section 170.020 is added to read as follows and all other OMB control number citations in part 170 are removed:

§ 170.020 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part—	Current OMB control No.
§ 170.075	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.080	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.085	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.090	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.095	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.100	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.110	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.120	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.125	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.135	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.180	2115-0095, 2115-0114, 2115-0130, 2115-0131
§ 170.210	2115-0589

41. Section 170.055 is amended by redesignating paragraphs (f) through (u) as paragraphs (g) through (v), respectively, and by adding new paragraph (f) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(f) *Documented alterations* means changes to the vessel which are reflected in the approved stability information carried on board the vessel.

* * * * *

42. Section 170.110 is amended by revising paragraph (c) and the introductory text of paragraph (d), and adding a new paragraph (f) to read as follows:

§ 170.110 Stability booklet.

* * * * *

(c) Each stability book must contain sufficient information to enable the master to operate the vessel in compliance with applicable regulations in this subchapter. Information on loading restrictions used to determine compliance with applicable intact and damage stability criteria must encompass the entire range of operating drafts and the entire range of the operating trims. Information must include an effective procedure for supervision and reporting of the opening and closing of all loading doors, where applicable.

(d) The format of the stability booklet and the information included will vary dependent on the vessel type and operation. Units of measure used in the stability booklet must agree with the units of measure of the draft markings. In developing the stability booklet, consideration must be given to including the following information:

* * * * *

(f) On board electronic stability computers may be used as an adjunct to the required booklet, but the required booklet must contain all necessary information to allow for the evaluation of the stability of any intact condition that can be evaluated by use of the computer.

43. Section 170.210 is added to read as follows:

§ 170.210 Lightweight verification.

(a) Except as provided in paragraph (e) of this section, verification of a vessel's lightweight displacement and longitudinal center of gravity is required for all vessels, including vessels built prior to January 3, 1984, as follows:

(1) The owner must conduct a deadweight survey at intervals not exceeding 5 years to determine the lightweight displacement and longitudinal center of gravity, unless

otherwise authorized by the Commandant.

(2) For each vessel, the date by which its initial periodic lightweight verification must be carried out will be determined by the OCMI by consideration of a number of factors. These factors include the history and condition of the vessel, the date of the vessel's last lightweight verification, the date of the vessel's next credit drydocking, and the expiration date of the vessel's Load Line Certificate.

(3) An authorized Coast Guard representative must be present at each deadweight survey conducted under this section.

(4) If the deviation from the lightweight displacement and longitudinal center of gravity does not exceed the values in paragraph (b) of this section, the owner must certify to the Commanding Officer, Marine Safety Center that the lightweight characteristics have not changed. The Commanding Officer, Marine Safety Center may accept the certification or require the owner to provide supporting calculations for review and approval.

(b) The owner must conduct a stability test in accordance with subpart F of this part, if—

(1) The deviation of the lightweight displacement calculated from the last stability test exceeds 3 percent of the lightweight displacement;

(2) The deviation of the longitudinal center of gravity calculated from the last stability test exceeds 1 percent of LBP (length between perpendiculars);

(3) The deviation from the previously approved lightweight displacement, updated by documented alterations, exceeds 2 percent of the lightweight displacement; or

(4) The deviation from the previously approved longitudinal center of gravity, updated by documented alterations, exceeds 1 percent of LBP.

(c) If a stability test is required by paragraph (b) of this section, the stability booklet must be updated in accordance with § 170.110 to reflect the current stability condition of the vessel.

(d) The deadweight survey required in paragraph (a)(1) of this section must be repeated as part of the stability test required in paragraph (b) of this section, unless the entire stability test including the deadweight survey is completed at the same time.

(e) Periodic lightweight verification is not required for the following:

(1) Vessels to which the simplified stability test of § 171.030 of this chapter was applied;

(2) Vessels with an estimated lightweight center of gravity determined in accordance with § 170.200;

(3) Vessels to which § 170.175(d) applies;

(4) Self-elevating mobile offshore drilling units;

(5) Vessels regulated under subchapter D or subchapter I of this Chapter whose lightweight displacement comprises less than 35 percent of their total fully loaded displacement; or

(6) Vessels exempted by the Commandant.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

44. The authority citation for part 171 continues to read as follows:

Authority: 43 U.S.C. 3306, 5115; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. Section 171.080 is amended by revising the introductory text of paragraph (d), by redesignating paragraph (e) as paragraph (f), and by adding new paragraph (e) to read as follows:

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(d) *Damage survival for vessels constructed prior to December 10, 1992.* A vessel is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

* * * * *

(e) *Damage survival for vessels constructed on or after December 10, 1992.* A vessel is presumed to survive assumed damage if it is shown by calculations to meet the conditions set forth in paragraphs (e)(1) through (e)(6) of this section in the final stage of flooding and the conditions set forth in paragraphs (e)(7) and (e)(8) of this section in each earlier stage of flooding as specified:

(1) Each vessel must have positive righting arms for at least 15 degrees beyond the final angle of equilibrium.

(2) Each vessel must not have any opening through which progressive flooding can occur within 15 degrees of the angle of equilibrium unless the vessel can meet all survival criteria prescribed in this section after progressive flooding. Openings fitted with effective weathertight closures must be considered as progressive flooding locations if the openings lead to spaces accessible to passengers or the crew.

(3) Each vessel must have an area under each righting arm curve of at least 2.82 foot-degrees (0.015 meter-radians), measured from the angle of equilibrium to the smaller of the following angles:

(i) The angle at which progressive flooding occurs; or

(ii) 22 degrees from the upright in the case of one compartment flooding or 27 degrees from the upright in the case of two compartment flooding.

(4) Each vessel must have a maximum righting arm within 15 degrees of the angle of equilibrium of at least 0.13 feet (0.04 meters) greater than each of the following heeling arms, but in no case less than 0.33 feet (0.10 meters):

(i) Passenger heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas towards one side of the vessel on the decks where muster stations are located and in such a way that they produce the most adverse heeling moment.

(ii) Asymmetric passenger escape routes heeling moment divided by vessel displacement if the vessel has asymmetric passenger escape routes where the heeling moment is calculated assuming:

(A) Each passenger weighs 165 pounds (75 kilograms);

(B) Each passenger occupies 2.69 square feet (0.25 square meters) of deck area; and

(C) All passengers are distributed on available deck areas in a manner that accounts for the use of any asymmetric passenger escape routes to get to the decks where muster or embarkation stations are located and in such a way that they produce the most adverse heeling moment.

(iii) Launching of survival craft heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) All survival craft, including davit-launched liferafts and rescue boats, fitted on the side to which the vessel heels after sustained damage are swung out if necessary, fully loaded and ready for lowering;

(B) Persons not in the survival craft that are swung out and ready for lowering are centered about the center line so that they do not provide additional heeling or righting moments; and

(C) Survival craft on the side of the vessel opposite to which the vessel heels remain stowed.

(iv) Wind pressure heeling moment divided by vessel displacement where the heeling moment is calculated assuming:

(A) A wind pressure of 2.51 pounds per square foot (120 Newtons per square meter);

(B) The wind acts on an area equal to the projected lateral area of the vessel above the waterline corresponding to the intact condition; and

(C) The wind lever arm is the vertical distance from a point at one-half the mean draft, or the center of area below the waterline, to the center of the lateral area.

(5) Each vessel must have an angle of equilibrium that does not exceed the following:

(i) 7 degrees for one compartment flooding; or

(ii) 12 degrees for two compartment flooding.

(6) The margin line of the vessel must not be submerged in the equilibrium condition.

(7) Each vessel must have a maximum angle of equilibrium that does not exceed 15 degrees during each earlier stage of flooding.

(8) Each vessel must have a maximum righting arm of at least 0.16 feet (0.05 meters) and positive righting arms for a range of at least 7 degrees during each earlier stage of flooding. Only one breach in the hull and only one free surface need be assumed when meeting the requirements of this paragraph.

* * * * *

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

46. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 175.01–3 also issued under the authority of 44 U.S.C. 3507.

47. Section 175.01–3 is amended by revising paragraph (b) to read as follows:

§ 175.01–3 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 177.05	2115–0095
§ 179.01–30	2115–0136
§ 179.10–3	2115–0095
§ 179.20–1	2115–0095
§ 185.20–5	2115–0589
§ 185.20–17	2115–0589
§ 186.10	2115–0514

PART 185—OPERATIONS

48. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; 49 CFR 1.46.

49. Section 185.20–5 is added to read as follows:

§ 185.20–5 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(c) If a log book is required, then the master must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) of this section.

50. Section 185.20–17 is added to read as follows:

§ 185.20–17 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) If a log book is required, then the master shall make the following entries:

(1) The time and door location of every closing of the loading doors; and

(2) Any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

51. Section 185.30–3 is added to read as follows:

§ 185.30–3 Hull markings.

(a) This section applies to each vessel that fits into any one of the following categories:

(1) A vessel of more than 65 feet (19.8 meters) in length.

(2) A sailing vessel of more than 65 feet (19.8 meters) in length.

(3) A vessel authorized to carry more than 150 passengers.

(4) A vessel authorized to carry more than 12 passengers on an international voyage.

(5) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

(b) All vessels must:

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward, amidships, and aft to indicate the maximum allowable draft and trim.

(c) A loading mark required by paragraph (b)(2) of this section must be a horizontal line of at least 8 inches in length and 1 inch in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in contrasting color to the sideshell paint.

(d) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(e) On a vessel on which the number of passengers permitted on the upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on the upper decks must be indicated by a durable marking of numbers and letters at least one inch in height at the entranceway to each such deck.

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 188—GENERAL PROVISIONS

52. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306, 5115; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. Section 188.01–15 is amended by revising paragraph (b) to read as follows:

§ 188.01–15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
§ 189.40–3	2115—0554
§ 189.40–5	2115—0554
§ 196.15–7	2115—0589
§ 196.15–18	2115—0589

PART 196—OPERATIONS

54. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

55. Section 196.15–7 is added to read as follows:

§ 196.15–7 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be, and then enter an attestation statement of the verification in the log book. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

56. Section 196.15–18 is added to read as follows:

§ 196.15–18 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, cargo, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) The master shall enter into the log book the time and door location of every closing of the loading doors.

(d) The master shall enter into the log book any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

57. Section 196.35–5 is amended by redesignating paragraphs (a)(4) through (a)(11) as paragraphs (a)(6) through (a)(13), respectively, and by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 196.35–5 Actions required to be logged.

(a) * * *

(4) Verification of vessel compliance with applicable stability requirements. After loading and prior to departure and at all other times necessary to assure the safety of the vessel. See § 196.15–7.

(5) Loading doors. Where applicable, every closing and any opening when not docked. See § 196.15–18.

* * * * *

58. Section 196.40–10 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and by adding new paragraphs (b), (e), (f), and (g) to read as follows:

§ 196.40–10 Draft marks and draft indicating systems.

(a) All vessels must have draft marks plainly and legibly visible upon the stem and upon the sternpost or rudderpost or at any place at the stern of the vessel as may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) The draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

* * * * *

(e) Draft marks must be separated so that the projections of the marks onto a vertical plane are of uniform height equal to the vertical spacing between consecutive marks.

(f) Draft marks must be painted in contrasting color to the hull.

(g) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

Dated: May 8, 1992.

A.E. Henn,

Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–21651 Filed 9–10–92; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Microwave Digestion; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL 4125-6]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Microwave Digestion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This amendment approves the use of an additional procedure, microwave heating, for digestion of samples prior to quantitative determination for 13 inorganic chemicals. The precision and recovery of analyses using this technique are not substantially different from those obtained using digestion techniques already approved. Use of approved analytical techniques is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: This rule shall be effective on October 13, 1992. In accordance with 40 CFR 23.2 (45 FR 26048), these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, September 28, 1992.

Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The incorporation by reference of certain publications listed in the regulation is approved by the Office of the Federal Register as of October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569-7306.

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is promulgated under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act". Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act".

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR part 136. Under 40 CFR 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved part 136 method exists 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4(a). Persons wishing to use such alternate procedures, must apply to the State or Regional EPA permitting office (for limited approval under § 136.4(b) and to the Director of the Environmental Monitoring Systems Laboratory in Cincinnati (for nationwide approval under § 136.4(d)). As specified below, today's rule approves an optional nationwide alternate procedure for digestion of certain metals in the preparation of wastewater test samples.

III. The Microwave Digestion Procedure

The CEM Corporation, in accordance with the regulations published at 40 CFR 136.5, applied for nationwide approval of their "Closed Vessel Microwave Digestion of Wastewater Samples for Metals Determination". Digestion is a sample preparation step that is required prior to the measurement of total metals in wastewaters. Specifically, as described below, microwave digestion may be applicable for the preparation of wastewater samples when testing using one or more of the following determinative techniques: Flame atomic absorption spectroscopy (AAS), inductively-coupled plasma (ICP) atomic emission spectroscopy (AES), or direct current plasma (DCP) AES. This rule approves the microwave digestion procedure for the following metals: Aluminum, antimony, arsenic, barium, cadmium, chormium, copper, iron, lead, manganese, nickel, selenium, and zinc.

A. Scope of the Procedure

This procedure utilizes closed-vessel microwave heating of samples as an alternative to the conventional open-beaker hot plate digestion. This procedure is specifically limited to the preparation of domestic and industrial wastewater samples for elemental determinations, as follows:

i. Thirteen elements: Aluminum, antimony, arsenic, barium, cadmium, chromium, cooper, iron, lead, manganese, nickel, selenium, and zinc by ICP/AES.

ii. Eleven elements: Aluminum, antimony, barium, cadmium, chromium, copper, iron, lead,

manganese, nickel, and zinc for determination by direct aspiration AAS.

iii. Ten elements: Aluminum, barium, cadmium, chromium, cooper, iron, lead, manganese, nickel, and zinc by DCP/AES.

This procedure is also specifically limited to the preparation of domestic and industrial wastewater samples for the determination of the 13 specified elements when present at concentrations less than or equal to those listed below:

Element	Maximum applicable concentration * (mg/L)
Aluminum	50.0
Antimony	50.0
Arsenic	50.0
Barium	0.5
Cadmium	0.5
Chromium	10.0
Copper	6.0
Iron	50.0
Lead	0.4
Manganese	5.0
Nickel	40.0
Selenium	80.0
Zinc	10.0

* Samples may be diluted, before digestion, to bring the concentration below the maximum concentration.

B. Summary of the Method

A 50-mL aliquot of a wastewater sample is acid-digested in closed Teflon ™PFA (perfluoro alkoxy) vessel using microwave heating. The closed vessel configuration allows the samples to be digested at a temperature and pressure that are significantly higher than those used for open-beaker digestions. The filtrate or supernatant of each digestate can be analyzed by direct aspiration AAS, by ICP/AES, or by DCP/AES, as specified above.

C. Technical Justification for Approved Procedure

Approval of this procedure is based on a data package submitted by the applicant, CEM Corporation. EPA is approving the method based on the method description, comparative analyses using the proposed and approved procedures, and EPA's comparability review.

The CEM Corporation provided test data comparing this procedure (microwave digestion) to the approved procedure (open beaker hot plate digestion) for preparation of test samples analyzed with ICP. EPA statisticians and chemists conducted an independent review of the data. The recovery and precision of all the submitted data (for both methods) was also compared to the recovery and precision acceptance criteria derived from an interlaboratory study of the ICP method for these elements.

The Agency judged the open beaker hot plate digestion procedure, utilized as the approved preparation method to be applicable for comparison against the microwave procedure for the preparation of samples to be analyzed for the 13 specified metals as follows: 13 by ICP/AES, 11 by direct aspiration AAS, and 10 by DCP/AES.

EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-Cincinnati) thoroughly reviewed and evaluated the supporting data submitted by the CEM Corporation. The comparability reviews indicated that the analyses afforded comparable recovery and precision in the evaluated concentration ranges for aluminum, antimony, arsenic, chromium, copper, iron, manganese, nickel, selenium, and zinc. The reviews, however, revealed that this microwave procedure only afforded comparable recovery and precision observations in the lower levels of the evaluated concentration ranges for barium (Ba), cadmium (Ca), and lead (Pb). Approval of this procedure for these three elements is, therefore, limited to the following concentrations: $\leq$0.5 mg Ba/L, $\leq$0.5 mg Cd/L, and $\leq$0.4 mg Pb/L. Additionally, one of the metals, silver, for which CEM sought method approval, was deemed inapplicable by EPA based on the applicants comparability data. EPA proposed approval of the microwave digestion procedure and sought public comment on the suitability of this microwave digestion technique as an alternate procedure for use in the determination of the thirteen metals in 56 FR 55410 (October 25, 1991). The administrative record is on file at EMSL-Cincinnati, 26 West Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. The approved procedure description is also available from CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR 136.5, EPA approved the CEM microwave digestion procedure as an acceptable procedure for nationwide use. Specifically, the procedure exhibits sufficient precision and recovery to establish (1) its acceptability under part 136 and (2) its comparability to other approved procedures for analysis of the 13 listed metals. As an approved alternate test procedure, this procedure is acceptable for use by any person required to test for the 13 listed metals when using ICP/MS, for the 11 listed metals when using direct aspiration AAS, and for 10 listed metals when using DCP/AES. The procedure, however, is limited to the applicable metals, determinative techniques and concentrations described above.

IV. Public Comments and Response to Most Significant Comments

The Agency requested comments on the proposal to approve the CEM microwave digestion procedure for applicability to 13 metals in wastewater samples. Comments were received from 10 individuals/organizations. All commenters favored the approval of microwave digestion as an acceptable alternate procedure (ATP). The most significant comments were as follows:

Comment: Approval of microwave digestion should not be specific to the CEM procedure.

Response: Under the conditions set forth in 40 CFR 136.4, any person may apply for approval of an alternate test procedure for nationwide use. Usually, as in the case of an instrument manufacturer such as CEM, the application is by its very nature proprietary. While this rule is specific to the CEM procedure, other microwave system manufacturers may apply for approval of their systems pursuant to 40 CFR 136.4. EPA will consider proposing a more generic microwave digestion procedure when validation data becomes available to support a broader scope procedure. EPA's Environmental Monitoring Management Council has a ongoing project to consolidate EPA's regulatory methods for metals. Included in the scope of this project is a microwave digestion procedure.

Comment: Three commenters expressed concern about the variability of microwave heating systems over their applicable ranges. Commenters were concerned that samples would not meet the required temperature for a long enough period of time. They recommended that multipoint power calibration be required consistent with that prescribed in Methods 3015 and 3051. Office of Solid Waste Method Manual, SW–846.

Response: EPA disagrees with the commenter's recommendation because this CEM microwave digestion procedure involves a slow heating rate and a single power setting. Further, this procedure is approved only for wastewaters and the temperature achieved for a minimum of 10 minutes is significantly higher than that achieved using the approved hot plate procedure. The acid concentration used with this CEM procedure is greater than that used with the approved hot plate procedure.

These conditions provide a more vigorous digestion than the approved hot plate procedure. The CEM procedure employed to generate the comparability data used a single point power calibration of the microwave system at 75% or 100% of power rating of the system depending on the number of samples to be digested. This procedure, for use with effluent samples involves a slow (30 or 50 minutes) heating rate at a fixed power setting. The comparability study demonstrated the adequacy of these conditions for digestion of 6 to 12 effluent samples containing the 13 applicable metals. The comparability study report, "Equivalency Study for Closed Vessel Microwave Digestion of National Pollutant Discharge Elimination System Waste Streams as an Alternate Test Procedure", was available in the rule making docket during the comment period. For this system, CEM has demonstrated that adequate digestion occurs because of a fixed rate of power increase and a long digestion period. The procedure demonstrates performance comparable to the approved procedure and any remaining variability does not affect test results. Therefore, EPA is not requiring a multipoint calibration when apply this CEM procedure. Multipoint power calibration may be important in the SW–846 methods to assure that a specific temperature is achieved in a short time and that the temperature is held for a predetermined time, because these methods employ a faster heating rate and variable power settings.

Comment: Evaluation of an alternate test procedure should not rely, exclusively, on a commercial vendor's data.

Response: EPA agrees. The internal ATP comparability review protocol requires that comparability data be generated by an independent, disinterested third party. The data submitted to EPA by CEM was, in fact, generated by Enseco Incorporated, Arvada, Colorado. Tables 1 and 2 of the procedure, listing recovery and precision data, were prepared by EPA during the course of its evaluation of the study results.

Comment: Several commenters objected to limiting the microwave digestion procedure to the 13 specified metals and limiting the applicable concentration ranges, especially those for barium, cadmium, and lead. This limitation will require the use of a second digestion procedure to cover all of the regulated metals and/or redigestion of samples after dilution, thus minimizing the advantage of microwave digestion.

Response: EPA agrees that, for greatest advantage, broad application of microwave digestion is preferred. However, ATP applicants have the option to limit their application. In this case, CEM chose to apply for approval for 14 metals. After evaluation of the data, EPA determined that comparability to the existing approved procedure was demonstrated only for the 13 specified metals and for the concentration ranges identified in the preamble and in the method. The method is not approved for the digestion of silver. EPA will consider extending the ranges, if acceptable comparability data become available. Microwave digestion is being approved as an option to the analyst. The analyst may choose to use it or not depending on the needs of the permittee.

Comment: One commenter recommended that EPA reconsider approving microwave digestion for samples to be analyzed for silver.

Response: The concentration levels of silver employed in the comparability study for the approved and the proposed procedures exceeded the EPA recommended levels. The observed recoveries in the applicable data were unacceptable for both the proposed and the approved procedures when compared to a previous interlaboratory study of the approved procedure. Therefore, EPA is not approving the use of microwave digestion for silver.

Comment: The proposal does not mention the use of microwave digestion for samples to be analyzed by either the graphite furnace atomic absorption (GFAA) or the inductively coupled plasma-mass spectrometry (ICP–MS).

Response: Microwave digestion is not approved for preparation of samples to be analyzed by GFAA or ICP–MS because no comparability data have been generated with either of these instruments, using the acid concentration specified in the CEM procedure. High acid concentration is known to cause interference when using conventional GFAA, as well as deterioration of the test instrument. Such deterioration tends to adversely affect precision and recovery and to require frequent maintenance. In addition, the ICP–MS method is not yet approved by EPA for use under 40 CFR part 136. However, EPA is now preparing a proposal to recommend approval of ICP–MS and, in the review process, is considering the applicability of microwave digestion.

Comment: Microwave digestion should be extended to sample matrices other than NPDES effluents.

Response: CEM submitted the ATP application for its microwave digestion procedure under the provisions of 40 CFR part 136 which applies only to testing pursuant to the Clean Water Act. As required, comparability data for this application were obtained from the analysis of appropriate effluent samples. The data are not applicable to other matrices and thus, this rule does not approve this CEM procedure for use with methods to determine compliance with other statutes such as the Resource Conservation and Recovery Act (RCRA). As indicated by foregoing reference to SW–846 Methods 3015 and 3051, the Office of Solid Waste is, independently, considering application of microwave digestion under RCRA.

Comment: One commenter expressed concern over whether the procedure has been adequately tested on samples containing suspended solids and whether there is a limit to the solids concentration that can be digested.

Response: The comparability study applied the currently approved hot plate digestion and the CEM microwave digestion procedures to 29 different industrial effluents that collectively represent the five most frequently monitored industrial categories for each of the 13 elements. The variety of samples studied more than adequately represents the range of physical characteristics, including suspended solids and chemical characteristics typically associated with industrial effluents. The question of a limit to the amount of solids that can be digested when using microwave or hot plate digestion has not been fully studied. However, the CEM comparability data does not indicate that settleable solid limitations are necessary for approval because the samples used in the comparability studies achieved comparable results. EPA, in preparing new methods for metals, is considering a limit of one percent undissolved solids in an aqueous sample. Currently, the approved hot plate procedure to which the microwave digestion is compared does not contain such limits.

Comment: One commenter expressed concern about safety in the use of microwave digestion equipment.

Response: When deciding to use the option of microwave digestion, the analyst must recognize potential safety hazards in using microwave equipment. CEM addressed safety issues in the procedure under Section 5. Apparatus and Equipment (5.3) and Section 7. Safety. Operator manuals supplied with the equipment also address safety issues.

V. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This final rule simply specifies an analytical technique which may be used by laboratories in measuring concentrations of certain metals and, therefore, has no adverse economic impacts. This action was submitted to OMB for review under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this rule gives all laboratories the flexibility to use this alternate method or not to use it.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 136

Incorporation by reference, Water pollution control.

Dated: September 2, 1992.

F. Henry Habicht II,

Acting Administrator.

In consideration of the preceding, EPA amends part 136 of title 40 of the Code of Federal Regulations as follows:

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising in Table IB of paragraph (a): the column headings, footnote 4, and footnote 34; by adding footnote 35; and by adding a new footnote number 36 for the following entries and by revising these entries: 3, Aluminum; 5, Antimony; 6, Arsenic; 7, Barium; 12, Cadmium; 19, Chromium; 22, Copper; 30, Iron; 32, Lead; 34, Manganese; 37, Nickel; 60, Selenium, and 75, Zinc; and paragraph (b) is amended by revising the reference (32) and by adding a new reference (33) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and methods	Reference (Method No. or Page)				
	EPA [1, 35]	Std. methods 17th Ed.	ASTM	USGS [2]	Other
* * * * * * *					
3. Aluminum—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	202.1	3111D		I–3051–85	
AA furnace	202.2	3113B			
Inductively coupled plasma (ICP) [36]	[5] 200.7	3120B			
Direct current plasma (DCP) [36], or			D4190–88		Note 34.
Colorimetric (Eriochrome cyanine R)		3500–A1 D			
* * * * * * *					
5. Antimony—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	204.1	3111 B			
AA furnace, or	204.2	3111 B			
ICP [36]	[5] 200.7	3120 B			
6. Arsenic-Total [4], mg/L; digestion [4] followed by	206.5				
AA gaseous hydride	206.3	3114 B 4.d	D2972–84(B)	I–3062–85	
AA furnace	206.2	3113 B			
ICP [36], or	[5] 200.7	3120 B			
Colorimetric (SDDC)	206.4	3500–As C	D2972–84(A)	I–3060–85	
7. Barium—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	208.1	3111 D		I–3084–85	
AA furnace	208.2	3113 B			
ICP [36], or	[5] 200.7	3120 B			
DCP [36]					Note 34.
* * * * * * *					
12. Cadmium—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	213.1	3111 B or C	D3557–90 (A or B)	I–3135–85 or I–3136–85.	C [3] 974.27 D [9] p.37.
AA furnace	213.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36]				I–1472–85	
Voltometry [11], or			D4190–88		Note 34.
Colorimetric (Dithizone)		3500–Cd D	D 3557–90 C		
* * * * * * *					
19. Chromium—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	218.1	3111 B	D1687–86(D)	I–3236–85	[3] 974.27
AA chelation-extraction	218.3	3111 C			
AA furnace	218.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190–88		Note 34.
Voltametry [11], or			D3557–90C		
Colorimetric (Diphenylcarbazide)		3500–Cr D	D1687–84(A)		
* * * * * * *					
22. Copper—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	220.1	3111 B or C	D1688–90 (A or B)	I–3270–85 or I–3271–85.	[3] 974.27 [9] p. 37.
AA furnace	220.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190–88		Note 34.
Colorimetric (Neocupnoine), or		3500–Cu D	1688–84		
(Bicinchoninate)		or E	(88)(A)		Note 19.
* * * * * * *					

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and methods	Reference (Method No. or Page)				
	EPA [1, 35]	Std. methods 17th Ed.	ASTM	USGS [2]	Other
30. Iron—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	236.1	3111 B or C	D1068-90 (A or B)	I-3381-85	[3] 74.27.
AA furnace	236.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or					Note 34.
Colorimetric (Phenanthroline)		3500-Fe D	D1068-90(D)		Note 22.
* * * * * * *					
32. Lead—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	239.1	3111B or C	D3559-90 (A or B)	I-3399-85	[3] 974.27.
AA furnace	239.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36]			D4190-88		Note 34.
Voltametry [11], or			D3559-90(C)		
Colorimetric (Dithizone)		3500-Pb D			
* * * * * * *					
34. Manganese—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	243.1	3111 B or C	D858-90 (A or B)	I-3454-85	[3] 974.27.
AA furnace	243.2	3113 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Persulfate), or		3500-Mn D	D858-84(A) (1988)		[3] 920.203.
(Periodate)					Note 23.
* * * * * * *					
37 Nickel—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	249.1	3111B or C	D1886-90 (A or B)	I-3499-85	
AA furnace	249.2	3111 B			
ICP [36]	[5] 200.7	3120 B			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Heptoxime)		3500-Ni D			
* * * * * * *					
60. Selenium—Total [4], mg/L; digestion [4] followed by:					
AA furnace	270.2	3113 B			
ICP [36], or	[5] 200.7	3120 B			
AA gaseous hydride	270.3	3114 B	D3859-88(A)	I-3667-85	
* * * * * * *					
75. Zinc—Total [4], mg/L; digestion [4] followed by:					
AA direct aspiration [36]	289.1	3111 (B or C)	D1691-90 (A or B)	I-3900-85	[3] 974.27. [9] p. 37.
AA furnace	289.2				
ICP [36]	[5] 200.7	3120 b			
DCP [36], or			D4190-88		Note 34.
Colorimetric (Dithizone) or		3500-Zn E			
(Zincon)		3500-Zn F			Note 33.

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983." One (section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions. **Note:** If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Note: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals, (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)
b. is visibly transparent with a turbidity measurement of 1 NTU or less
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * * * * * * * *

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986-Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotomertic SDDC method for arsenic are provided in appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

[36] "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals", CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106-0200, April 16, 1992. Available from the CEM Corporation.

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(b)

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References, Sources, Costs, and Table citations:

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(32) "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes", Method AES 0029, 1986-Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923. Table B, Note 34.

(33) "Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals, CEM Corporation, P.O. Box 200, Matthews, North Carolina 28106-0200, April 16, 1992. Available from the CEM Corporation. Table IB, Note 36.

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September 11, 1992

Part IV

Environmental Protection Agency

40 CFR Part 414

Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitations Guideline Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 414

[FRL-4088-7]

RIN 2040-AB65

Organic Chemicals, Plastics and Synthetic Fibers Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating several amendments to agency regulations which limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Point Source Category. These amendments are based on an October 18, 1990 proposal (55 FR 42332).

These amendments allow regulatory authorities to establish alternative cyanide limitations and standards based on best professional judgment for elevated levels of non-amenable cyanide that result from the unavoidable complexing of cyanide at the process source of cyanide-bearing waste streams; allow regulatory authorities to establish alternative metals limitations and standards to accommodate low background levels of metals in non-"metal-bearing waste streams" that result from corrosion of construction materials, intake water, contamination of raw materials or other incidental metal sources deemed appropriate by the regulatory authority; specify the method for determining five-day biochemical oxygen demand (BOD_5) and total suspended solids (TSS) effluent limitations for direct discharge plants that manufacture products in more than one subcategory; correct listing errors in appendices of the agency regulations; revise the applicability sections of the Other Fibers, Thermoplastic Resins, and Thermosetting Resins Subcategories to correspond to the rulemaking record technical data and analyses; delete one product and two product groups from coverage by this regulation; and move the coverage of two products and one product group from the Bulk Organic Chemicals Subcategory to the Specialty Organic Chemicals Subcategory.

DATES: These regulations shall become effective October 26, 1992.

The compliance date for PSES is September 11, 1995. The compliance dates for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BPT and BAT are established in permits. In accordance with 40 CFR part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time (14-days from the date of publication in the FR), 1992.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be had only be filing a petition for review in the United States Court of Appeals within 120 days after the promulgation date of today's regulation. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought the EPA to enforce these requirements.

ADDRESSES: The supporting information and all comments and responses on this amendment to 40 CFR part 414 will be available for inspection and copying at the EPA Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460, room 2404 (EPA Library Rear—Mail Code PM-213). The basis for this amendment is detailed in the supplement to the OCPSF record which is also in the PIRU. The PIRU is open between the hours of 9 a.m. to 4:30 p.m. For additional information contact George M. Jett, Project Officer, Chemicals Branch, Engineering and Analysis Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George M. Jett at (202) 260-7151.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Background and Rationale for Amendments
III. Public Participation and Responses to Comments
A. Non-Amenable Cyanide Limits
B. Allowances for Non-Metal-Bearing Wastes Streams
1. Intake Water
2. Requirements to Document Sources and Quantities of Incidental Metals
3. Plant Operating Conditions
4. Agency's Consideration of Issuing Guidance or Standards
5. Establishment of Limitations at "Zero"
6. Appropriateness of Construction materials
7. Allowance for Increased Concentration
C. Revisions to Appendices A and B
D. Multi-Subcategory Calculations of BOD5 and TSS Limitations
E. Applicability of §§ 414.30, 414.40 and 414.50
F. Amendments to §§ 414.40 and 414.70
G. Timing of Promulgation and Effective Dates of Amendments
H. Summary
IV. Cost Impact Analysis
V. Executive Order 12291
VI. Regulatory Flexibility Analysis
VII. Paperwork Reduction Act

I. Legal Authority

The amendments to 40 CFR Part 414 described in this notice are promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended (33 U.S.C. 1251 et seq.)), also referred to as "the Act" or "CWA."

II. Background and Rationale for Amendments

EPA's explanation of the background and rationale for today's amendments are contained in the October 18, 1990, proposal, 55 FR 42332, as supplemented by the responses to comments in the following section of this preamble.

Briefly, the cyanide amendment is pursuant to a settlement agreement with W.R. Grace & Company (Grace), Koppers Company, Inc. (Koppers), E.I. DuPont de Nemours & Company (DuPont), and the Chemical Manufacturers Association (CMA). The agreement (March 29, 1989, D. Kaplan to R. Taylor) partially settled a dispute between those petitioners and EPA that was the subject of a petition for judicial review of the final OCPSF regulation promulgated by EPA on November 5, 1987 (52 FR 42522).

The additional amendments arise out of an agreement that was reached among EPA, CMA and Dupont during litigation (June 22, 1988, D. Weitman to T. Garrett).

Lastly, based on EPA's review of Category Determination Requests related to the applicability of the OCPSF regulations submitted pursuant to 40 CFR 403.6(a), EPA is revising and correcting errors related to the applicability of part 414.

III. Public Participation and Responses to Comments

The Agency received comments from eight (8) separate sources: the Chemical Manufacturers Association (CMA) and seven companies (Beazer East, Inc., Dow Chemical Company, W.R. Grace & Company, Hoechst/Celanese Corporation, Monsanto Company, Sterling Chemicals, Inc., and Union Camp Corporation). Generally, the comments were favorable to the proposal, except that one commenter, Hoechst/Celanese, objected to EPA's promulgation of the production-proportioning formulas and several commenters provided conditional

support for several amendments as described below.

A. Non-Amenable Cyanide Limits

Today's amendment adds § 414.11(g), which allows the permit writer or control authority to establish alternative cyanide limitations and standards based on his or her best professional judgment (BPJ) by evaluation of existing process conditions for elevated levels of non-amenable cyanide that result from the unavoidable complexing of cyanide at the process source of cyanide-bearing wastestreams. Comments were received from CMA, W.R. Grace, Monsanto and Sterling on this amendment.

All four comments supported the proposed amendment. CMA and Sterling provided anecdotal information, and Grace and Monsanto provided information and performance data to substantiate their concurrence with the proposed non-amenable cyanide amendment.

B. Allowances for Non-Metal-Bearing Waste Streams

Today's amendment adds § 414.11(h), which allows for the establishment by the permit writer or control authority of limitations for chromium, copper, lead, nickel, and zinc and discharge standards for lead and zinc from incidental sources of metals. The amendment applies to wastestreams not listed in appendix A and not otherwise determined to be "metal-bearing waste streams" where the permit writer or control authority determines that wastewater metals contamination is due to background levels that are not reasonably avoidable from such sources as corrosion of construction materials or contamination of raw materials.

Comments were received from CMA, Dow Chemical, W.R. Grace, Hoechst/Celanese, Monsanto, and Sterling on this amendment. Grace and Sterling were completely supportive while CMA, Dow, Hoechst and Monsanto expressed conditional support for the amendments. The comments are discussed below.

1. Intake Water

As proposed, § 414.11(h) would not have provided a basis for an allowance for metals in intake water on the ground that such intake water contamination was covered under the provisions of 40 CFR 122.45(g) for direct dischargers and 40 CFR 403.15 for indirect dischargers, which provide authority for EPA to grant credits for pollutants in a discharger's intake water in certain circumstances.

CMA, Dow Chemical and Monsanto objected to the proposed exclusion of intake water as a source of incidental metals under § 414.11(h). The commenters pointed out that §§ 122.45(g) and 403.15 are intended to address situations where dischargers are seeking limitations that are higher than applicable guideline limits to account for intake sources of pollutants. These provisions do not provide a substitute for § 414.11(h), as applied to intake water contamination, because § 414.11(h) specifically provides that the incidental metal source allowance cannot exceed the applicable limitations contained in §§ 414.91 and 414.101. In addition, the commentors point out that §§ 122.45(g) and 403.15 generally apply to situations where water is being drawn from and discharged to the same water body and therefore would not normally provide a basis for EPA to factor intake water pollutants into end-of-pipe limitations for discharges into different water bodies.

The Agency agrees with the three commenters that intake water can be a source of incidental metals and that this possibility is not adequately accounted for by the provisions of 40 CFR 122.45(g) for direct discharge or 40 CFR 403.15 for indirect dischargers, because these provisions apply principally to situations where water is discharged into the same body from which it is drawn. Therefore, the Agency modifies the proposal to specify that metals in intake waters may be the basis for a metals allowance under § 414.11(h).

2. Requirements to Document Sources and Quantities of Incidental Metals

The Agency proposed that the determination that incidental metals are unavoidably present must be based upon a review of relevant plant operating conditions, process chemistry, engineering, and sampling and analysis information (55 FR 42338). CMA and Dow Chemical objected to what they considered to be "too rigorous an application of the demonstration requirement," and especially to the requirement that the actual quantities and sources of incidental metals be demonstrated through sampling.

CMA agreed "that allowances for incidental sources of metals should be based on more than mere estimates" but stated "it may be impossible precisely to identify the various metals sources * * * [and] * * * it may be impossible to quantify such metal sources." CMA specifically took issue with the statement in the preamble to the proposal that the presence of such metals must be demonstrated by actual sampling data. Dow Chemical suggested that EPA allow regulatory authorities more freedom to use best professional judgment rather than limiting the allowance to situations where actual sampling data demonstrates the presence of incidental metals. Dow also challenged the permit writers' technical ability to accurately assess the factors identified in the proposal, arguing that the proposal requires the permit writer to be a metallurgist, chemical engineer, and chemist. Both CMA and Dow suggest that the complexity of many OCPSF plants may make it impossible to identify the sources and quantities of incidental metals. Both commenters suggested that the Agency change the regulation language to read, "the determination *should* be based upon a review of relevant plant operating conditions, process chemistry, engineering *or* sampling and analysis information", (emphasis added).

The Agency disagrees with these comments. It is clear from the proposal that a permit writer or control authority cannot grant an incidental metals allowance unless a discharger can demonstrate that the presence of incidental metals is not reasonably avoidable and that in no case can the allowance exceed the amount of metals actually present in a wastestream. These requirements are appropriate and consistent with the June 22, 1988 agreement between EPA and CMA and DuPont pursuant to which the incidental metals allowance was proposed. If a wastestream is not "metal-bearing" as defined in the OCPSF regulation, see, e.g., 40 CFR 414.25(b), there should generally be no metals in the wastestream. The allowance provided by today's amendment should be available only for quantities of metals from incidental sources which are not reasonably avoidable in the wastestream, which clearly cannot be higher than the quantities of such metals actually present. If the presence of metals in a wastestream is reasonably avoidable, there is no reason why the discharger should be relieved from complying with the guideline requirement that no metals allowance be assigned to the wastestream. A permit writer cannot accurately and reliably make the determination that metals are not reasonably avoidable in certain quantities without actual sampling data.

A principal flaw in the commenters' objection that the sources of metals may not be ascertainable is that, independent of the inquiry into the *sources* of incidental metals, the permit writer must determine the *quantities* of incidental metals actually present in a non-"metal-bearing" waste-stream in order to determine the upper bound for the allowance. This determination would be

practically impossible to make without sampling and analysis.

Moreover, despite the conceded complexity of many chemical plants, EPA disagrees that the source(s) of metals cannot be identified. Today's amendment and the preamble to the proposal are clear that the metals allowance provided in § 414.11(h) is not an end-of-pipe allowance; it applies at the process source. When actual effluent sampling data reveals the presence of metals at a particular process source, additional sampling (e.g., of raw materials, intake water and effluent), combined with an analysis of plant operating conditions, process chemistry, and engineering should enable the discharger to identify, and the permit writer to confirm, the source(s) of such metals in the wastestream for the specific process in question.

Even if the source(s) cannot be identified with absolute certainty, only a full evaluation of the listed factors will enable the permit writer to arrive at the most informed, best professional judgment as to the source(s) of incidental metals, whether the presence of these metals is not reasonably avoidable and what quantities of these metals at or below the amounts actually present in the discharger's wastestream are achievable. For example, if sampling were to reveal that the source of incidental metals in a discharger's wastestream is raw materials contamination, this situation should lead the discharger and permit writer to inquire whether alternative sources are available, whether a different input could be substituted for the contaminated one, etc. In contrast, a determination that the source of metals is corrosion of piping would raise a different set of issues. Contrary to the commenters' assertions, the complexity of plants in the industry is not a reason to forego actual sampling; in fact, it is one of the principal reasons why such a complete evaluation is necessary to make the finding that certain levels of metals are not reasonably avoidable.

The Agency also disagrees with commenters' assertions that permit writers and control authorities are unqualified to assess the necessary scientific information and data to make sound BPJ decisions. The factors identified in today's amendment are the same types of factors which permit writers must evaluate on a regular basis in making BPJ determinations. Permit writers are instructed to consider, among other things, the process employed at a plant, the engineering aspects of various types of control technologies, and process changes. 40 CFR 125.3(d). Permit writers also evaluate effluent data and other technically complex data submissions, such as the results of biological toxicity tests, required to be submitted by permit applicants pursuant to 40 CFR 122.21(g)(7). The same holds true for control authorities, which collect and review information from indirect dischargers which is similar to that collected and reviewed by permit writers for direct dischargers. See 40 CFR 403.12(b) (indirect dischargers must submit to control authorities, among other things, descriptions of operations, including schematic process diagrams, flow measurements, and sampling and analysis data). Permit writers and control authorities are fully qualified to evaluate these factors. Moreover, Dow's comment rests on the false premise that a permit writer works in a vacuum. On the contrary, the permit writer, of course, has full access to the resources and expertise of the Agency, which routinely addresses the factors identified in the new § 414.11(h) during the development of effluent guidelines and in numerous other contexts.

3. Plant Operating Conditions

On a related point, CMA and Dow were concerned about the requirement in the proposal that permit writers consider "plant operating conditions" in determining whether to grant an incidental metals allowance. Both felt that the permit writer should address only how the plant is maintained and not consider confidential processing information. CMA encouraged the Agency to specify that plant operating conditions meant "how the plant is run (e.g., maintenance and repair considerations), not * * * confidential process information." Both commenters stated that, if the Agency insists on collecting confidential process information, it must provide safeguards for protection of such information.

EPA disagrees with these comments. EPA understands the "confidential process information" referred to by the commenters to be information relating to how a product or product group is manufactured. This includes such information as the raw materials used in manufacture, the reaction chemistry, and the engineering design including the materials of construction and equipment specifications. This will often be precisely the kind of information which a permit writer needs to determine whether incidental metals are not reasonably avoidable and at what levels. Information regarding raw materials will often be necessary to determine whether they are the source of metals in a discharger's effluent. Reaction chemistry and information on materials of construction will often be necessary to determine whether the source of incidental metals is the corrosion of piping or other metal equipment.

Maintenance and repair information, in contrast, would rarely if ever provide the basis for a metals allowance. To the extent the presence of metals in wastewater is due to a plant operator's maintenance or repair practices, the presence of such metals should generally be avoidable through good management practices, such as training programs, operator safety programs and proper scheduling of maintenance and repair. Maintenance and repair information alone would not provide sufficient information regarding plant operating conditions to provide the basis for an incidental metals allowance.

With respect to the protection of confidential business information (CBI), EPA regulations presently provide ample safeguards against unauthorized disclosure of CBI collected by EPA (40 CFR part 2 and 40 CFR 122.7), and no additional protection is needed. The treatment of CBI collected by control authorities and states that are implementing their own authorized NPDES programs is principally governed by state and local laws, see §§ 123.25(a)(3) and 403.14(b), (c). If the commenters have concerns about the adequacy of these laws, their recourse is with the states or localities; EPA's longstanding position is that it will not dictate to states and localities how to treat CBI, 45 FR 33381 (May 19, 1980); 46 FR 9436 (January 28, 1981).

In any event, while EPA appreciates the commenters' concerns regarding CBI, these concerns are not a basis to object to today's amendment. The comments submitted go to the adequacy of EPA's CBI regulations generally, not, as they purport, to today's amendment. Today's amendment does not, for the first time, require or authorize permit writers and control authorities to collect CBI. On the contrary, as described in the preceding section, permit writers and control authorities already collect and review confidential process information, see, e.g., 40 CFR 122.21(g)(7), 125.3(d), 403.12(b). In addition to this specific permit-related authority, both EPA and control authorities have general authority to collect a broad range of information, including CBI, CWA Section 308; 40 CFR 403.8(f)(1)(v), 403.10(e) (POTWs and states implementing their own pretreatment programs must have information collection authority at least as extensive

as the CWA 308 authority). Dow and CMA have not alleged or demonstrated that the information to be collected under today's amendment differs from other CBI which permit writers and control authorities collect routinely. Today's amendment is not the forum for a broader challenge against the Agency's ten-year-old CBI regulations.

4. *Agency's Consideration of Issuing Guidance or Standards*

In the preamble to the amendments (55 FR 42335) the Agency listed a table of long-term average background levels which was being considered as a basis for guidance or standards for accommodating background levels of metals. The Agency requested public comment and data on these values and on the desirability of issuing guidance or standards.

CMA objected to publishing guidance concentrations with the amendments. Furthermore, CMA indicated that if the Agency chose to require minimum or maximum values, a median concentration should also be published.

Because no data was submitted and the only comment received objected to the publishing of guidance concentrations, EPA has decided not to publish numerical guidance or standards. The Agency does not have adequate data at this time to publish guidance concentrations or standards for incidental metal sources and leaves the selection of numerical limits and standard up to the best professional judgment of the permitting or control authority on a case-by-case basis.

5. Establishment of Limitations at "Zero"

CMA and Dow objected to the provision in the proposed amendment that provided that "permit writers may establish limitations * * * between zero (0) and the concentration of metals in the non-metal-bearing streams" (55 FR 42338), and recommended the language be changed to read "between the practical quantitation level (PQL) for the relevant analytical method and the concentration of such metals present in wastestreams." The commenters argued that a level of zero (0) is not measurable and that zero is an undefined term.

Upon review, EPA agrees that it would be inappropriate to set a permit limitation at zero for the reasons stated by the commenters. However, EPA does not agree that the PQL is the appropriate lower bound. Rather, under today's rule, the individual permit writer or control authority will determine on a case-by-case basis what is the lowest level of an incidental metal which can be reliably measured in a wastestream. The permit writer or control authority will set a limit for the metal between this lowest level and the amount of the metal actually present in the wastestream. EPA recommends that permit writers and control authorities use the "minimum levels" (MLs) for metals, as set forth in draft EPA method 1620, as this lowest measurable level. The draft method contains the following MLs: 10 micrograms per liter (μg/L) for chromium, 25 μg/L for copper, 5 μg/L for lead, 40 μg/L for nickel, and 20 μg/L for zinc. Draft method 1620 is available for inspection and copying at the EPA Public Information Reference Unit. EPA recommends use of the ML for guidance purposes only; permit writers have discretion to use whatever method they deem most appropriate for determining the lowest measurable quantity.

EPA believes that the ML, rather than the PQL, is the appropriate guidance level to recommend to permit writers. The PQL is typically set as a multiple of the method detection limit (MDL). The MDL is defined as "the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero * * * 40 CFR 136, App. B. The MDL is an appropriate lower bound where the question to be answered is whether an analyte is present, but is less suitable for determining at what quantity the analyte is present. Because exceeding the permit level may trigger an enforcement action, the level should be measurable with a reasonable degree of confidence.

The PQL is defined as "the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operation conditions." 52 FR 25699. It generally ranges from three to ten times the MDL. The ML is related to the PQL but is generally lower than the PQL for a given analyte. The ML is defined as "the level at which the entire analytical system shall give recognizable signal and acceptable calibration points." The ML is the level at which EPA has determined, based on actual reports and data from a number of laboratories, that the amount of a substance or compound can be measured reliably in industrial wastewater matrices, and is an appropriate guidance level for permit writers. As explained in the promulgation of the OCPSF guideline, the PQL has been used by the Office of Drinking Water and Office of Solid Waste for drinking water and ground water matrices. In contrast, the Office of Water has used the ML for measuring constituents in industrial wastewater matrices, 52 FR 42562–42563. Moreover, the Office of Water recommended the use of the ML concept as the basis for permit action levels in its May 21, 1990 memorandum titled "Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the United States" and stated its intention to continue to use the ML in establishing numerical limitations for the discharge of pollutants in wastewater, p. 19. Thus, EPA recommends that permit writers use the ML as the lower bound in determining the appropriate permit level for an incidental metal.

6. Appropriateness of Construction Materials

Hoechst/Celanese was concerned about the preamble statement that "inappropriate materials of construction * * * are not the basis for metals allowances. (55 FR 42335) The commenter states that its plant was constructed 50 years ago using copper and copper alloy pipe, which is generally more subject to corrosion than stainless steel pipe, which the commenter states would be used if the plant were being built today. The commenter requests that EPA clarify that the appropriateness of construction material should be determined as of the time the plant was built.

EPA declines to provide the "clarification" requested by the commenter. A permit writer must determine, based on BPJ, whether the presence of background levels of metals is not reasonably avoidable in a wastestream. The permit writer will consider all relevant factors in exercising this BPJ, including, where appropriate, the age of a plant (40 CFR 125.3(d)). It is within the permit writer's discretion to determine—on a case-by-case basis and in view of all relevant factors—whether construction materials are "appropriate." In some cases, the permit writer may conclude that it is appropriate to grant an allowance for incidental metals which result from corrosion from pipes made from a now-obsolete construction material which was state-of-the-art at the time the plant was built; in other cases, the permit writer may, for example, determine that it is reasonable for the plant to replace some piping and set limits accordingly. Thus, EPA clarifies that the preamble statement in question was not intended to circumscribe the permit writer's general BPJ authority to consider the age of a plant, but EPA cannot set forth a general rule that the appropriateness of construction materials is to be determined as of the date of construction.

In reviewing this comment and the other comments received on the proposed incidental metals allowance, EPA is concerned that the proposal may appear to have created an inflexible scheme in which permit writers would be deprived of their normal discretion in making BPJ determinations. That was not the intent of the proposal, and EPA has slightly modified the final rule from the proposed version by clarifying that, in order to qualify for the allowance, a facility must demonstrate that the presence of metals is "not reasonably avoidable." The proposed version provided that the presence of metals had to be "unavoidable" for the facility to qualify for the allowance. Strictly speaking, the incidental presence of metals will always be theoretically avoidable at some level of expense. EPA did not intend to require that the presence of the metals be literally unavoidable in order for a facility to qualify for the allowance, but rather that the permit writer or control authority will use BPJ in determining whether the presence of incidental metals is not reasonably avoidable. This means that the permit writer or control authority will consider, to the extent relevant, the age of equipment and facilities involved (as described in the preceding paragraph), the process employed (for example, whether the wastestream generated by a manufacturing process creates incidental metals in the effluent because it corrodes piping, and whether that problem could be alleviated through a process change), the engineering aspects of the application of various types of control techniques, process changes (for example, the substitution of a raw material contaminated with a metal for an unadulterated raw material), the cost of achieving effluent reduction (for example, an evaluation of whether the presence of metals can be avoided at a cost that is reasonable in light of the quantity of metals present in the wastestream and the quantity that would be removed through the contemplated control measures), and non-water quality environmental impacts. 40 CFR 125.3(d)(3).

7. Allowance for Increased Concentration

Monsanto suggested that the Agency expand the incidental metals amendment to include allowances for mass discharges for process operations that involve evaporation, which could result in greater metals concentrations. No supporting data was provided.

The Agency declines to expand the proposed amendment. The suggested expansion is completely distinct from EPA's proposal, pursuant to the settlement agreement with Grace, Koppers, DuPont and CMA, to amend the OCPSF guidelines to provide an allowance for incidental sources of metals. Moreover, the logic of Monsanto's suggestion to allow for increased concentration due to evaporation would appear in theory to apply to all pollutants, not just to metals. EPA lacks data to provide the technical basis for such a significant amendment to the OCPSF guidelines, and, in any event, could not promulgate such an amendment without providing notice and an opportunity for comment.

C. Revisions to Appendices A and B

Appendix A of part 414 contains a list of product/processes with cyanide-bearing wastestreams. These wastestreams are subject to the cyanide limitations established in part 414. Appendix B of part 414 is a list of product/processes with complexed metal-bearing wastestreams. These wastestreams are not subject to the part 414 metals limitations, but are regulated on a BPJ basis (40 CFR 414.11(f)). EPA proposed several changes to the lists of product/processes in these Appendices to more accurately reflect the nature of the metals associated with the product/process.

Two favorable comments were received on the proposed revisions to Appendices A & B. CMA provided anecdotal information to support its concurrence with the proposal. Dow Chemical supported the proposed language, which, it stated, would better represent the waste characteristics of the product/processes. EPA is promulgating these amendments as proposed.

D. Multi-Subcategory Calculations of BOD_5 and TSS Limitations

EPA today effects a technical amendment by adding § 414.11(i), which incorporates into the body of the regulations the formula for proportioning BOD_5 and TSS concentration limitations for different subcategories to a plant which manufactures products in more than one subcategory covered by part 414.

Favorable comments were received from CMA, Dow Chemical, and Monsanto. CMA stated, and Dow and Monsanto agreed, that "the volume of production within each subcategory is the correct basis for calculating end-of-pipe limits for multi-subcategory plants." As CMA correctly observed, "[b]ecause the derivation of the BPT guideline limits was based on the percentage of production within the various BPT categories, so too must the application of the limits be based on the production volumes within each subcategory."

One negative comment was received. Hoechst/Celanese took issue with what it characterized as the Agency's proposal to "mandate [ ] use of the production-proportioning formula" and argued that multi-subcategory limitations should be based on the proportion of a plant's wastewater flow in each subcategory, not the proportion of the plant's production in each subcategory.

EPA disagrees with Hoechst/Celanese. Contrary to the commenter's assertion, today's promulgation does not, for the first time, mandate the use of the production-proportioning formula, which was already the required method for calculating limits for multi-subcategory plants. Rather, today's amendment merely responds to concerns raised-by-CMA, DuPont, and other petitioners in the litigation that permit writers might fail to use the formula set forth in the preamble to the November 5, 1987 final OCPSF rule promulgation and the accompanying Development Document.

The Development Document sets out the formulas contained in today's amendment and explains that, "for plants with production activities classified by two or more subcategories, the permit writer would use a building-block approach *based on production proportioning* to use the promulgated subcategorical limitations as a basis for establishing plant-specific permit requirements." (OCPSF Development Document, EPA 440/1–87/009, October 1987 at IX-10 (emphasis added)). Similarly, the preamble to the final OCPSF rule states that, "[i]n applying the limitations set forth in the regulation, the permit writer will use what is essentially a building-block approach that takes into consideration applicable subcategory characteristics and *the proportion of production quantities within each subcategory* at the plant." (52 FR 42533 (emphasis added).) These statements reflect EPA's intention and understanding that the production-proportioning formula would be the basis for setting limits at multi-subcategory plants.

This method of deriving permit limits for multi-subcategory plants is a necessary corollary of EPA's methodology in developing the OCPSF BPT limitations. The regression equation used by EPA in establishing the BPT limitations "model[ed] long-term average effluent BOD as a function of *the proportion of the production of each subcategory* at each [multi-subcategory] facility." (52 FR 42533 (emphasis

added)). Similarly, the Development Document states that EPA established limitations for the various subcategories based on a "regulatory approach that proportions the various subcategory long-term averages for each plant based on the reported *proportion of production* by product group * * *." (OCPSF Development Document, page IV–6, October 1987) EPA specifically found that flow proportioning was "not appropriate" as a basis for establishing limitations and that "there was no technical basis in the record to conclude that achievable long-term mean effluent concentrations were significantly affected by water use practice in the industry." 52 FR 42533. Given the fact that EPA established the OCPSF BPT limitations—and determined that they were technically and economically achievable as required by the CWA—by proportioning the data from multi-subcategory plants on a production basis, rather than flow basis, the Agency could not implement the guideline by setting actual permit limits on a flow-proportioned basis.

Today's amendment simply clarifies an approach which was already inherent in the guideline itself. Hoechst/Celanese could have challenged the production-proportioning approach within 120 days of promulgation of the OCPSF guideline pursuant to section 509(b) of the Clean Water Act. EPA did not intend to re-open this fundamental, underlying aspect of the guideline by proposing to publish the production-proportioning formula in the body of the regulations.

Even if this were the appropriate forum to challenge the production-proportioning approach, EPA believes, for the reasons set forth above, that the approach is correct; Hoechst/Celanese has provided no data or information in its comments which undercut the validity of the findings which EPA made for the OCPSF industry during the rulemaking. To the extent the commenter believes that its facility presents factors which differ from those considered for the industry during the rulemaking, the proper remedy would have been a request for a fundamentally different factors variance from the guideline under section 301(n) of the Act.

E. Applicability of §§ 414.30, 414.40 and 414.50

The Agency proposed to amend the applicability of subpart C, Other Fibers (§ 414.30), subpart D, Thermoplastic Resins (§ 414.40), and Subpart E, Thermosetting Resins (§ 414.50), to include all products defined in terms of the four- and five-digit Standard Industrial Classification (SIC) codes which the Subparts were intended to cover. EPA intended that the regulation would cover all production within the SIC codes which define the OCPSF industry. For subparts F through H, covering commodity, bulk, and specialty organic chemicals respectively, the OCPSF regulation accomplishes this intent by capturing the production of all organic chemicals not specifically listed in subparts F and G under subpart H as specialty products. Subparts C, D, and E, however, incorrectly limit the coverage of the guidelines to production of the products and product groups specifically listed in §§ 414.30, 414.40, and 414.50 respectively, thus creating the potential for production of fibers and resins to escape coverage. EPA intended the products listed in these sections to be illustrative rather than exclusive, and today's amendment accomplishes that intention.

CMA, Dow Chemical, Monsanto and Union Camp submitted comments on this proposal. CMA and Dow stated the Agency must demonstrate that it actually intended the coverage of these Subparts to be comprehensive, and that the OCPSF record supports the proposed amendment. Both also were concerned that plants be given sufficient time to comply with the limitations for the added product/processes in the affected subparts.

The OCPSF record demonstrates that EPA intended the coverage of these Subparts to be comprehensive and fully supports today's amendment. EPA developed and promulgated the OCPSF guideline in part pursuant to a settlement agreement entered by the Agency in settlement of a 1976 law suit brought by several environmental groups to compel EPA to promulgate guidelines (Development Document at I–2). The agreement required EPA to promulgate the OCPSF guideline and defined the OCPSF industry to include all production within SIC codes 2865, 2869, 2821, 2823 and 2824 (id. at III–4). Accordingly, the original October 1983 OCPSF Clean Water Act section 308 Survey collected production and related technical and economic information based on SIC codes.

The introduction of the questionnaire, page 1, explains that, "[f]or the purpose of this survey, the OCPSF industry is defined as all establishments that manufacture: (1) Organic chemical products included within the U.S. Department of Commerce Bureau of the Census Standard Industrial Classification (SIC) major groups 2865 and 2869 and/or (2) plastics and synthetic fibers products included in SIC major groups 2821, 2823, and 2824." The questionnaire collected OCPSF production information from all production within these SIC codes. Indeed, much of the information was reported in aggregate form based on SIC codes; only respondents that were primary manufacturers of OCPSF products (generally, where at least one half of a manufacturer's production was of OCPSF products or where OCPSF process wastewaters are treated in a system with 25 percent or less dilution by non-OCPSF process wastewater) reported the specific products they produced, and only for products which constituted at least one percent of total production. The remaining production information was reported by SIC code only. The questionnaire was plainly intended to provide the basis for a comprehensive regulation of the industry covering all relevant SIC codes. This intent is further evidenced by the *Selected Summary of Information in Support of the OCPSF Point Source Category*, which was the support document for the July 17, 1985 Notice of Availability, 50 FR 29068. The document explains that "[t]he Agency has defined the Plastic/Synthetic Fibers industry (subparts C, D, and E) to include *all* facilities within SIC codes 2821, 2823 and 2824" (p. 2, emphasis added).

EPA used the data it collected to develop limitations and standards that could be applied across subcategories that covered all production within the relevant SIC codes. The aggregated SIC code data which EPA received, along with the product-specific data, were assigned to the appropriate subcategories, and formed part of the basis for the existing OCPSF limitations and standards. (Assignment of Part A and Part B Production to OCPSF Subcategories, A. Shattuck to the Record, July 8, 1992.) Thus, the regulation is based, in part, on generic SIC code data; EPA's data based contains no information on the specific products represented by this aggregated data. Today's correcting amendment merely conforms the regulations to EPA's intention in establishing the limitations, and, in any event, as explained below, is fully supported by the methodology employed in developing the limitations.

The OCPSF subcategorization scheme was challenged in the litigation over the guideline on the grounds that SIC codes did not provide a rational basis to subcategorize, and that the BPT limitations established were therefore arbitrary and capricious (as explained below, the BAT limitations are independent of the rule's product-based

subcategorization). The Fifth Circuit upheld the scheme, concluding, based on its review of the rulemaking record, that "SIC codes tend to be organized around the products produced by various segments of the industry, and that the type of product in turn influences the wastestream characteristics of those plants" (870 F.2d at 216).

Where EPA found that wastewater treatability varied within a SIC code to such an extent that all production within the SIC code could not be grouped within a single subcategory, the Agency further subcategorized to accommodate this variety. For example, production within SIC codes 2823 and 2824 is covered by subpart C, except for production of rayon fibers, a SIC code 2823 product, which EPA determined was sufficiently distinct to merit a separate subcategory (Dev. Doc. p. IV–20). EPA also divided production within SIC code 2821 between thermoplastic resins (SIC code 28213, subpart D) and thermosetting resins (SIC code 28214, subpart E). The Agency concluded that "process chemistry and engineering are broadly consistent within these groupings" (id.). Similarly, production within SIC codes 2865 and 2869 is divided among three subcategories—F (commodity organic chemicals), G (bulk organic chemicals), and H (specialty organic chemicals)—based on the quantity of a chemical produced nationally, because EPA concluded that the rate of biodegradation, and therefore the treatability, of organic pollutants varied with parameters related to the volume of national production (id. at IV–21). Overall, EPA concluded that, "[b]ased on the distribution of raw waste and effluent BOD5 concentrations, the relative consistency of percent removal data across the final seven subcategories, and BOD5 effluent within subcategories and within product groups within those subcategories, * * * the adopted BPT subcategorization accounts sufficiently for wastewater characteristics and treatability" (id. at IV–37).

Production that falls within the SIC codes which define subcategories C through E should be similar in nature and should therefore have similar wastewater and treatability characteristics regardless of whether EPA collected and assessed data with respect to the specific product in question. EPA concludes that the BPT limitations for these subparts are achievable for all such production. To the extent a specific plant has wastewater characteristics that differ fundamentally from the other plants within the subcategory, that plant may of course seek alternative limits through a fundamentally different factors (FDF) variance under CWA section 301(n). However, the fact that individual plants may present plant-specific concerns does not invalidate the subcategorization.

With respect to the BAT limitations, EPA concluded in the OCPSF rulemaking that "OCPSF plants can economically achieve compliance with the BAT limitations * * * through some combination of in-plant or end-of-pipe demonstrated technology irrespective of products produced," and therefore did not subcategorize based on production. (52 FR 42532). EPA concludes, therefore, that OCPSF production that falls within the SIC codes which define subparts C through E will, like production of the specifically listed products, have similar wastewater characteristics and will similarly be able to achieve compliance with the BAT limitations.[1] Again, plant-specific concerns, if any exist, can be addressed through the FDF mechanism.

Finally, EPA notes that it would have been virtually impossible to collect and analyze data for each individual product in the OCPSF industry. The industry manufactures over 25,000 products. EPA collected product or product group-specific data for about 1000 of these, and aggregated data for the remainder. Even with the data so aggregated, EPA required four years from the time it distributed the original questionnaire to promulgate the final OCPSF regulation. The Agency had no choice but to develop a methodology to group plants into categories based on similar characteristics and to make reasonable conclusions about the discharge levels that those plants can achieve. As explained above, the subcategorization scheme adopted by EPA accomplishes that result.

The compliance dates for today's amendment will follow the same statutory requirements as any new rule. In accordance with 40 CFR 23.2, this regulation shall be considered issued for purposes of judicial review at 1 p.m., Eastern time (14-days from the date of publication in the FR), 1992. These regulations shall become effective (45-days from the date of publication in the FR), 1992.

The compliance date for PSES is (three years from the date of publication in the FR), 1995. The compliance dates for NSPS and PSNS is the date the new source begins operation. Deadlines for compliance with BPT and BAT are established in permits.

[1] Note that NSPS, PSES and PSNS under the OCPSF guideline are based on BAT and BPT. The conclusions reached above for BAT and BPT therefore apply to all of the limitations and standards established in the guideline.

F. Amendments to §§ 414.40 and 414.70

The Agency proposed to amend § 414.70 by removing Citric Acid and Fatty Acids from § 414.70(a) and removing Aspirin from § 414.70(c) and regulating them as specialty organics. Dow and Union Camp supported these proposed amendments.

The Agency proposed to amend part 414.40 by removing "cellulose sponge". The Agency also proposed to amend part 414.70(e) by removing "dithiophosphates, sodium salt" and "waxes, emulsions—dispersions". No comments were received on these three amendments.

G. Timing of Promulgation and Effective Dates of Amendments

Monsanto objected to the timing of the promulgation of these amendments, arguing that the Agency was not proceeding "as expeditiously as possible" as it agreed to do in the settlement agreement on which these amendments are based. Monsanto characterized the issues involved as "relatively straightforward."

EPA disagrees with Monsanto. Today's amendment raises a number of complex issues and have required thorough evaluation by EPA. In particular, EPA has devoted a substantial amount of time to considering and responding to the comments submitted by Monsanto and others. EPA believes it is in both the Agency's and the commenters' best interest that EPA carefully evaluate all comments and other issues raised by a regulatory change. The Agency has proceeded on this amendment as expeditiously as possible.

H. Summary

Having thoroughly reviewed all of the comments, the Agency has decided to amend part 414 as proposed in the October 10, 1990 FR notice except as changed to add intake water as a possible source of incidental metals, to provide that an incidental metals allowance may be granted where the presence of metals is "not reasonably avoidable," and to provide that incidental metals limitations must be established between the lowest level which the permit writer or control authority determines can be reliably measured and the concentration of such metals present in the wastestreams not to exceed the applicable limitations contained in §§ 414.91 and 414.101. The remainder of 40 CFR part 414 is unchanged.

IV. Cost Impact Analysis

EPA does not anticipate additional incremental costs or impacts to the OCPSF industry as a result of these amendments. While these amendments expand the applicability of three subparts, this expansion simply conforms the regulation to the original rulemaking methodology, including the original costing methodology, which was done on a SIC-code basis. There has been no change to the costing procedure used in the 1987 promulgation.

V. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely clarifies the applicability of the regulation, corrects listing errors and establishes flexibility in implementing an existing regulation by allowing regulatory authorities to accommodate site specific factors relating to complexed-cyanide and background levels of metals in non-metal-bearing waste streams that are not reasonably avoidable. Today's amendments do not impose significant new requirements; thus, they meet none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq., EPA must submit a copy of any rule that contains a collection-of-information requirement to the Director of the Office of Management and Budget for review and approval. This notice contains no additional information-collection requirements beyond those already required by 40 CFR 403 and 40 CFR 122, and therefore the Paperwork Reduction Act is not applicable.

List of Subjects in 40 CFR Part 414

Chemicals, Plastics materials and synthetics, Water pollution control, Water treatment and disposal.

Dated: September 1, 1992.

F. Henry Habicht II,

Acting Administrator.

For the reasons set out in the preamble, 40 CFR part 414 is amended as set forth below.

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat. 816, Pub. L. 95–217, 91 Stat. 156, Pub. L. 100–4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. Section 414.11 is amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 414.11 Applicability.

* * * * *

(g) *Non-amenable cyanide.* Discharges of cyanide in "cyanide-bearing waste streams" (listed in Appendix A to this part) are not subject to the cyanide limitations and standards of this part if the permit writer or control authority determines that the cyanide limitations and standards are not achievable due to elevated levels of non-amenable cyanide (i.e., cyanide that is not oxidized by chlorine treatment) that result from the unavoidable complexing of cyanide at the process source of the cyanide-bearing waste stream and establishes an alternative total cyanide or amenable cyanide limitation that reflects the best available technology economically achievable. The determination must be based upon a review of relevant engineering, production, and sampling and analysis information, including measurements of both total and amenable cyanide in the waste stream. An analysis of the extent of complexing in the waste stream, based on the foregoing information, and its impact on cyanide treatability shall be set forth in writing and, for direct dischargers, be contained in the fact sheet required by 40 CFR 124.8.

(h) *Allowances for non-metal-bearing waste streams.* Discharge limitations for chromium, copper, lead, nickel, and zinc or discharge standards for lead and zinc may be established for waste streams not listed in Appendix A of this part and not otherwise determined to be "metal-bearing waste streams" if the permit writer or control authority determines that the wastewater metals contamination is due to background levels that are not reasonably avoidable from sources such as intake water, corrosion of construction materials or contamination of raw materials. The determination must be based upon a review of relevant plant operating conditions, process chemistry, engineering, and sampling and analysis information. An analysis of the sources and levels of the metals, based on the foregoing information, shall be set forth in writing; for direct dischargers, the analysis shall be contained in the fact sheet required by 40 CFR 124.8. For direct dischargers, the permit writer may establish limitations for chromium, copper, lead, nickel, and zinc for non-"metal-bearing waste streams" between the lowest level which the permit writer determines based on best professional judgment can be reliably measured and the concentrations of such metals present in the wastestreams, but not to exceed the applicable limitations contained in §§ 414.91 and 414.101. (For zinc, the applicable limitations which may not be exceeded are those appearing in the tables in §§ 414.91 and 414.101, not the alternative limitations for rayon fiber manufacture by the viscose process and the acrylic fiber manufacture by the zinc chloride/solvent process set forth in footnote 2 to each of these tables.) For indirect dischargers, the control authority may establish standards for lead and zinc for non-"metal-bearing waste streams" between the lowest level which the control authority determines based on best professional judgment can be reliably measured and the concentration of such metals present in the wastestreams, but not to exceed the applicable standards contained in §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85. (For zinc, the applicable standards which may not be exceeded are those appearing in the tables in the above referenced sections, not the alternative standards for rayon filber manufacture by the viscose process set forth in footnote 2 to the table in § 414.25, or the alternative standards for acrylic fiber manufacture by the zinc chloride/solvent process set forth in footnote 2 to the table in § 414.35.) The limitations and standards for individual dischargers shall be set on a mass basis by multiplying the concentration allowance established by the permit writer or control authority by the process wastewater flow from the individual wastestreams for which incidental metals have been found to be present.

(i) BOD_5 and TSS limitations for plants with production in two or more subcategories. Any existing or new source direct discharge point source subject to two or more of subparts B through H must achieve BOD_5 and TSS discharges not exceeding the quantity (mass) determined by multiplying the total OCPSF process wastewater flow subject to subparts B through H times the following "OCPSF production-proportioned concentration": For a specific plant, let w_j be the proportion of the plant's total OCPSF production in subcategory j. Then the plant-specific production-proportioned concentration limitations are given by:

$$\text{Plant } BOD_5 \text{ Limit} = \sum_{j=B}^{H} (w_j)\,(BOD_5 \text{ Limit}_j) \text{ and}$$

$$\text{Plant TSS Limit} = \sum_{j=B}^{H} (w_j)\,(\text{TSS Limit}_j).$$

The "BOD_5 $Limit_j$" and "TSS $Limit_j$" are the respective subcategorical BOD_5 and TSS Maximum for Any One Day or Maximum for Monthly Average limitations.

§§ 414.21, 414.31, 414.41, 414.51, 414.61, 414.71 and 414.81 [Amended]

3. In each of §§ 414.21, 414.31, 414.41, 414.51, 414.61, 414.71 and 414.81, the first sentence which reads "Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table." is revised to read "Except as provided in 40 CFR 125.30 through 125.32, and in 40 CFR 414.11(i) for point sources with production in two or more subcategories, any existing point source subject to this subpart must achieve discharges not exceeding the quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration listed in the following table."

4. Section 414.30 is amended by revising the first sentence to read as follows:

§ 414.30 Applicability; description of the other fibers subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of products classified under SIC 2823 cellulosic man-made fibers, except Rayon, and SIC 2824 synthetic organic fibers including those fibers and fiber groups listed below.* * *

* * * * *

5. Section 414.40 is amended by revising the first sentence of the text and by removing from the list the entry, "Cellulose Sponge" to read as follows:

§ 414.40 Applicability; description of the thermoplastic resins subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the products classified under SIC 28213 thermoplastic resins including those resins and resin groups listed below.* * *

* * * * *

6. Section 414.50 is amended by revising the first sentence of the text to read as follows:

§ 414.50 Applicability; description of the thermosetting resins subcategory.

The provisions of this subpart are applicable to the process wastewater discharges resulting from the manufacture of the products classified under SIC 28214 thermosetting resins including those resins and resin groups listed below.* * *

* * * * *

§ 414.70 [Amended]

7. Section 414.70 is amended by removing from the listing in paragraph (a) the entries, "Citric Acid" and "*Fatty Acids"; by removing from the listing in paragraph (c) the entry, "Aspirin"; and by removing from the listing in paragraph (e) the entries, "Dithiophosphates, Sodium Salt" and "*Waxes, Emulsions—Dispersions".

Appendix A [Amended]

8. Part 414, Appendix A is amended by removing from the Cyanide listing the entries, "Hexamethylene diisocyanate/Hexamethylene diamine (1,6-Diaminohexane) + phosgene", "Methylene Diphenylisocyanate (MDI)/Phosgenation of methylene dianiline from Aniline + Formaldehyde", "Polyurethane resins/Diisocyanate + Polyoxyalkylene glycol", "Polyurethane fibers (Spandex)/Polyoxyalkylene glycol + Tolylene diisocyanate + dialkylamine" and "Tolylene diisocyanate (isomeric mixture)/Tolylene diamines + Phosgene".

9. Appendix B to Part 414 is amended by adding two entries to the end of the listing for Lead to read as follows:

Appendix B to Part 414—Complexed Metal-Bearing Waste Streams

* * * * *

Lead

* * * * *

Tetraethyl lead/Alkyl halide + sodium-lead alloy

Tetramethyl lead/Alkyl halide + sodium-lead alloy

* * * * *

[FR Doc. 92–21780 Filed 9–10–92; 8:45 am]

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Friday
September 11, 1992

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3710

Use and Occupancy Under the Mining Laws; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

[WO-680-4130-02-241A]

RIN 1004-AB88

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth the restrictions on use and occupancy of unpatented mining claims and mill sites on Federal lands. It would limit the use of such lands by the claimant to those activities related to prospecting, mining, or processing operations, and uses reasonably incident to them. The rule would establish conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures.

DATES: Comments should be submitted by November 10, 1992. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 208-4147.

SUPPLEMENTARY INFORMATION: Public concern about unauthorized non-mining industrial uses and residential occupancy—often termed "squatting"—has necessitated that the BLM develop regulations to address the issue. These uses often interfere with legitimate uses of the public lands, and sometimes pose public dangers. On the other hand, it is improper to classify all miners as potential squatters. There is often a need for legitimate occupancy associated with mining activities, particularly in remote areas. The proposed rule has been carefully crafted to ensure that any administrative or regulatory actions would be carried out with due process.

The BLM is proposing new regulations in 43 CFR subpart 3715 to allow for and to set conditions and standards for use and occupancy that are reasonably incident to prospecting, mining, or production, and to provide field managers with the tools necessary to manage use and occupancy. The proposed rule is mainly substantive, setting forth conditions and standards that would apply to all activities on unpatented mining claims, regardless of the authorities under which they are carried out. The proposed rule would not change any of these authorities or the procedures employed to carry them out.

The proposed rule would define those activities that are related to prospecting, mining, or processing operations and uses reasonably incident thereto, in effect placing into the Secretary's regulations the "reasonably incident" standard established in Bruce Crawford, et ux, 1985, 92 ID 208, 86 IBLA 350. "The * * * 'reasonably incident' standard resolves questions as to the permissibility of a use by determining whether or not the use is reasonably incident to the activities actually occurring. The 'unnecessary or undue degradation' (of section 302(b) of the Federal Land Policy and Management Act) standard comes into play only on a determination that degradation is occurring * * * (T)he inquiry then becomes one of determining whether the degradation occurring is unnecessary or undue assuming the validity of the use which is causing the impact. For, if the use is, itself, not allowable, * * * that use may be independently prohibited as not reasonably incident to mining."

The proposed rule would recognize two levels of activity on unpatented mining claims and the public lands under the mining laws: Occupancy, which involves full or part time residential activities, and use, which encompasses all activities including residency. The proposed rule would define and prohibit those non-mining uses that are clearly not allowed under the standard, even though they may have the look and feel of mining (e.g., precious metal recovery from electronic, photographic, or catalytic converter scrap as a part of toll smelting on independent mill sites).

The proposed rule in § 3715.1 would define the standards that all uses are required to meet. Section 3715.2 would define the conditions under which occupancy would be allowable.

Section 3715.3 would create a requirement for consultation with the authorized officer prior to the initiation of any aspect of occupancy. Consultation would run parallel with the provisions of the surface management regulations.

Consultation would be subject to a review by the authorized officer that would include the use of the National Environmental Policy Act (NEPA) in reviewing the proposed occupancy or fencing. Consultation would not be completed by the authorized officer until the NEPA process is completed. This process would adopt any existing NEPA-based review processes. For plan level operations, consultation would be coincident with plan review and approval found in the surface management regulations (3802 and 3809). Consultation for a section 3809 notice-level operation would begin at the same time that the notice review commences. However, it would not be subject to the 15-day notice review period found in the surface management regulations. Those portions of operations that do not involve occupancy and that are part of the notice would be allowed to proceed in the normal fashion after the 15-day review. Those portions of operations, such as section 3809 casual use or section 3802 activities, that do not require a plan and that involve occupancy or fencing would be required first to pass through the consultation process.

This consultation would provide the authorized officer with the opportunity to determine whether the occupancy or fencing complies with the regulations and to ensure public passage through or access to adjacent public lands and private inholdings consistent with the standards of the Unlawful Inclosures of Public Lands Act, Public Law 167, and *U.S.* v. *Curtis-Nevada Mines, Inc., et al.*, 611 F.2d 1277 (9th Cir. 1980). Further, the separate consultation decision would make specific statements that would form the basis for a FLPMA section 302(c) termination order if non-compliance by the operator occurs.

The proposed rule, in § 3715.4, would set standards of operation for permissible use or occupancy.

In § 3715.5 the proposed rule would specify the acts prohibited by the regulations.

The proposed rule, in § 3715.6, would create an inspection and enforcement mechanism, specify prohibited acts, and allow the authorized officer to choose among administrative, civil, and criminal remedies to address prohibited acts.

In § 3715.7, the proposed rule would require all operators to record the existence of their occupancy with the

authorized officer within 60 days of the effective date of the final rule. Failure to record the occupancy will bring the full force and effect of the regulation on the mining claimant and the operator. Recordation would allow an operator with an existing occupancy that is not yet the subject of an action by the Secretary 1 year to come into compliance with the regulations. Continued occupancy after that date would be required to meet the conditions and standards of the regulations.

In §§ 3715.6 and 3715.8, the proposed rule would set forth the potential remedies available to the authorized officer and the potential penalties that may result for failure to comply with the regulations, including provisions for orders and the use of additional land use authorizations where appropriate.

In § 3715.9, the proposed rule would lay out the appeals process. Mining claimants or operators would be permitted to appeal an adverse decision or determination to the State Director and then to the Interior Board of Land Appeals (IBLA). An appeal would not stay the authorized officer's decision, unless a stay is granted by the Secretary, acting through the IBLA. Parties other than the mining claimant or the operator would only be able to appeal a decision under 43 CFR part 4.

The principal author of this proposed rule is Richard Deery of the Division of Mining Law and Salable Minerals, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is 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 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. No discernible economic impacts on operations involving occupancy are expected from this proposed rule. All operations involving occupancy are expected to occur under notices or plans. The BLM is unaware of any casual use occupancies. The cost of complying with the requirements of the proposed rule is indistinguishable from the requirements imposed by the existing surface management regulations. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The BLM estimates approximately 6,000 mining operations by small entities exist on public lands in the Western States. The effect of the rule would be to curtail activities by those whose occupancy of the public lands is not reasonably incident to mining, milling, or prospecting. However, the only activities that would be curtailed are those that are unlawful.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will affect no lawful occupancies, except to the extent that it requires certain information to be included in plans and notices. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this information is estimated to average 2 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 the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–xxxx, Washington, DC 20503.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects for 43 CFR Part 3710

Administrative practice and procedure, Mines, Public lands—mineral resources.

Under the authorities cited below, and for the reasons stated in the preamble, part 3710, Group 3700, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is proposed to be amended by adding subpart 3715 as follows:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3715—Use and Occupancy Under the Mining Laws

Sec.

3715.0–1 Purpose.
3715.0–2 Objectives.
3715.0–3 Authority.
3715.0–5 Definitions.
3715.0–6 Policy.
3715.0–7 Scope.
3715.1 Use.
3715.2 Conditions of occupancy.
3715.3 Consultation prior to occupancy.
3715.4 Standards of use or occupancy.
3715.5 Prohibited acts.
3715.6 Inspection and enforcement.
3715.7 Existing occupancy.
3715.8 Penalties.
3715.9 Appeals.

Subpart 3715—Use and Occupancy Under the Mining Laws

Authority: 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1732–1733; 43 U.S.C. 0061; 16 U.S.C. 3101 et seq.; 43 U.S.C. 1201; 18 U.S.C. 1001.

§ 3715.0–1 Purpose.

The purposes of the regulations in this subpart are to:

(a) State specifically the uses allowable and the uses prohibited under the requirement in section 4(a) of the Surface Resources Act, Public Law 84–

167 (30 U.S.C. 612), and other applicable law, that mining claims shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto.

(b) Inform persons operating under the mining laws of their basic rights and responsibilities relative to use and occupancy.

(c) Identify laws and regulations applicable to use and occupancy of unpatented mining claims or public lands open to the mining laws.

(d) Enumerate instances where use and occupancy of unpatented mining claims or public lands open to the mining laws are authorized, and to set standards for such use or occupancy.

(e) Enumerate prohibited acts relating to use and occupancy and unpatented mining claims or public lands open to the mining laws.

(f) Provide for administrative remedies, and appropriate civil and criminal penalties, for cases of non-compliance with the regulations in this subpart.

§ 3715.0–2 Objectives.

The objective of this regulation is to prevent non-mining industrial uses and unauthorized residential occupancy.

§ 3715.0–3 Authority.

(a) Section 1 of the Mining Law of 1872, as amended, (30 U.S.C. 22), provides that, except as otherwise provided by law, all valuable mineral deposits in lands belonging to the United States shall be free and open to exploration and purchase, and the lands containing them shall be open to occupation and purchase under regulations prescribed by law and the local customs or mining district rules that are not inconsistent with the laws of the United States.

(b) Section 4 of the Surface Resources Act, Public Law 84–167 (30 U.S.C. 612) states that any mining claim located after July 23, 1955, under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto. Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for management and disposition of vegetative surface resources and management of other surface resources, or for access to adjacent land.

(c) Section 302(b) of the Federal Land Policy and Management Act (FLPMA) (Pub. L. 94–579) directs the Secretary to take all necessary actions to prevent unnecessary or undue degradation of the public lands.

(d) Section 302(c) of FLPMA directs the Secretary to include in all land use instruments a provision authorizing revocation or suspension, after public notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument. This section also provides that the Secretary may order an immediate temporary suspension of use, occupancy, or development prior to a hearing or final administrative finding if such a suspension is necessary to protect health, safety, or the environment.

(e) Section 303(a) of FLPMA states that the Secretary shall issue regulations necessary to implement the provisions of FLPMA with respect to the public lands, and establishes penalties for violation of such regulations.

(f) Section 303(g) states that the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited (43 U.S.C. 1733(g)).

(g) The Unlawful Occupancy and Inclosures of Public Lands Act prohibits inclosures and exclusive use and occupancy of the public lands, without claim or color of title as described in the Act (43 U.S.C. 1061 *et seq.*). The same Act states, in summary, that no person, by force, threats, intimidation, or by any fencing or any other unlawful means, shall prevent or obstruct peaceful entry, free passage or transit over or through the public lands by another person.

(h) Section 1110(b) of the Alaska National Interest Land Conservation Act provides, among other things, that a valid mining claim or other valid occupancy within or surrounded by conservation system units shall be given adequate and feasible access, subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

(i) 43 U.S.C. 1201 states that the Secretary of the Interior, or such officer as may be designated by the Secretary, is authorized to enforce and to execute, by appropriate regulations, every part of the provisions related to the public lands not otherwise specially provided for.

(j) 43 U.S.C. 1457 charges the Secretary with the supervision of public business relating to the public lands, including mines.

(k) 18 U.S.C. 1001 provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 3715.0–5 Definitions.

As used in this subpart the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) *Exploration or prospecting* means the search for mineral deposits by geological, geophysical, geochemical, or other techniques, including but not limited to sampling, drilling, or developing surface or underground workings to evaluate the type, extent, or quantity of mineral values present.

(c) *Mining operations* means all functions, work, facilities, and activities in connection with development, mining, or processing of mineral deposits and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this subpart, regardless of whether the operations take place on or off unpatented mining claims.

(d) *Occupancy* means those activities that may result in full or part time residence on the public lands or the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes. Such activities or structures may include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, homes, and the use of a watchman or caretaker for the purpose of monitoring activities on the public lands.

(e) *Permanent structure* means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term shall also include a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving.

(f) *Reasonably incident* means, for the purposes of this subpart, the statutory standard "reasonably incident to prospecting, mining, or processing

operations," which refers to those actions or expenditures of labor and means taken by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development.

§ 3715.0–6 Policy.

It is the policy of the Department of the Interior to encourage the development of Federal mineral resources. The use of public lands for this purpose is limited to those activities related to prospecting, mining, or processing operations, and activities and occupancies reasonably incident thereto. The Secretary will aggressively pursue abuse of the mining law to ensure that valid uses are recognized and that appropriate action is taken to eliminate invalid uses.

§ 3715.0–7 Scope.

These regulations apply to Federal lands open to the operation of the Mining Law of 1872, as amended, and administered by the Bureau of Land Management. They do not apply to State or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though they may be open to the operation of the mining laws.

§ 3715.1 Use.

(a) Use of a mining claim or public land for the exploration for and the development of mineral deposits under the mining laws is allowable if the activities are reasonably incident to prospecting, mining, or processing operations.

(b) All acceptable uses shall conform to the standards set out in § 3715.4 of this subpart.

(c) Activities that are not reasonably incident to prospecting, mining, or processing operations under the mining laws, but that are allowable under a land use authorization such as a permit or lease, may only be authorized under the regulations in part 2920 of this title.

(d) Activities that constitute uses that are not allowed under the public land laws, the mining laws, or the mineral leasing laws are not authorized.

(e) All uses that involve the placement, construction, or maintenance of enclosures, gates, fences, or signs shall occur only after consultation with the authorization officer as required under § 3715.3 of this subpart.

§ 3715.2 Conditions of occupancy.

(a) Use of mining claims or the public lands under the mining law for occupancy is allowable only if the activities justifying the occupancy are reasonably incident, constitute substantially regular and steady work, as weather permits, and are reasonably calculated to lead to the extraction and beneficiation of minerals.

(b) Activities warranting occupancy shall:

(1) Result in observable on-the-ground activity that may be verified by the authorized officer, pursuant to § 3715.6(a) of this subpart; and

(2) In the conduct of the observable on-the-ground activity specified, utilize appropriate equipment that is presently operable, subject to reasonable maintenance, repair, or fabrication time.

(c) In addition to the requirements specified in paragraph (b) of this section, activities warranting occupancy shall either:

(1) Expose, concentrate, or otherwise make available valuable minerals that require protection from theft or loss;

(2) Result in the presence of appropriate, operable equipment that requires protection from theft or loss or that if left unattended would constitute a hazard to public safety, or

(3) Result in surface uses, workings, or improvements that, if left unattended, would constitute a hazard to public safety; or

(4) Be located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length and not less than 8 hours, not including travel to the site from a community or area in which housing may be obtained.

(d) If the need for occupancy by a watchman or caretaker to protect valuable or hazardous property, equipment, or workings, is asserted, the need for such occupancy shall be on a continual basis, in addition to being reasonably incident. The need for a watchman or caretaker shall be such that either a watchman or caretaker is required to be present whenever the operation is not active or the mining claimant, operator, or workers are not present on the site.

§ 3715.3 Consultation prior to occupancy.

(a) Prior to initiation of any aspect or phase of occupancy within the meaning of § 3715.2 of this subpart, the mining claimant or operator shall consult with the authorized officer about the requirements of this subpart.

(b) Occupancy shall not be initiated until the mining claimant or operator has complied with either 43 CFR subpart 3802 or 43 CFR subpart 3809 and the authorized officer has completed any actions required under either subpart.

(c) Operators proposing to conduct activities under a plan of operations submitted pursuant to the provisions of 43 CFR subpart 3802 and 43 CFR subpart 3809 shall include in the proposed plan of operations the materials required by this subpart to describe any proposed occupancy.

(1) When submitted in this manner the authorized officer shall consider the proposed occupancy concurrently with the review of the plan of operation.

(2) The consultation provision of this subpart will be satisfied by the authorized officer making the determination required by this subpart concurrently with the approval of the plan of operations. All requirements in the determination statement provided for in paragraph (h) of this section will be included in the decision that approves, modifies, or disapproves the plan, as appropriate.

(d) Operators proposing to conduct activities that include any proposed occupancy pursuant to the notice provisions of 43 CFR subpart 3809 shall submit the materials required by this subpart in conjunction with the materials submitted pursuant to 43 CFR 3809.1–3.

(1) When submitted in this manner the authorized officer shall consider the proposed occupancy concurrently with the review of the proposed activity. However, the authorized officer will not make the determination until after he has completed the review of the materials required by this subpart.

(2) Activities in the notice which do not involve occupancy may proceed in accordance with 43 CFR 3809.1–3.

(e) Mining claimants or operators conducting operations which are casual use pursuant to 43 CFR subpart 3809 or which do not require a plan of operations under 43 CFR 3802.1–3 shall be subject to the consultation provisions of this subpart and shall submit the materials required by this subpart. Activities which constitute occupancy shall not occur until the authorized officer has completed the review of the materials required by this subpart and has made the required determination.

(f) The mining claimant or the operator shall provide the authorized officer with a map in sufficient detail to identify the site and the placement of the items specified in paragraphs (f) (3), (4), and (5) of this section and a written description of the proposed occupancy that describes in detail:

(1) How the proposed occupancy relates to activities reasonably incident to prospecting, mining, or processing operations;

(2) How the proposed occupancy meets the conditions specified in § 3715.2 of this subpart;

(3) Where temporary or permanent structures for occupancy will be placed;

(4) The location of fences and signs intended to exclude the general public;

(5) The location of reasonable public passage or access routes through or around the area to adjacent public lands; and

(6) The estimated period of use of the structures and fences as well as the schedule for removal and reclamation upon cessation of activities.

(g) All proposed occupancy, fences, or signs intended to exclude the general public shall be reviewed by the authorized officer to determine if the operator's assertion that the proposed occupancy or use will conform to the provisions of § 3715.1 or § 3715.2 of this subpart is correct.

(1) For proposed occupancy submitted in accordance with paragraph (d) or (e) of this section, the review will be completed within 30 business days of receipt of the materials unless the authorized officer concludes that the determination cannot be made until:

(i) 30 days after a final environmental impact statement has been prepared and filed with the Environmental Protection Agency or,

(ii) The authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(h) At the conclusion of the review, the authorized officer will prepare a written determination of concurrence or non-concurrence which will be provided to the mining claimant or operator. For operations conducted under a plan of operations, this written determination will be included in the decision that approves, modifies, or rejects the plan.

(1) Each concurring determination will contain a statement requiring the mining claimant or operator to comply with the standards set out in § 3715.4 of this subpart. After a concurring determination has been reached, failure of the mining claimant or the operator at any time to meet the standards in § 3715.4 (a) through (c) and (e) shall create a presumption that health, safety, or the environment may be at risk, and the authorized officer may, pursuant to section 302(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(c)), order an immediate, temporary suspension of occupancy prior to and during the pendency of an appeal, pursuant to § 3715.9 of this subpart.

(2) Each non-concurring determination will specify how the proposed occupancy fails to meet the conditions of § 3715.1 or § 3715.2 of this subpart and will provide the mining claimant an opportunity for an appeal, pursuant to § 3715.9 of this subpart.

(i) Following a non-concurring determination, a mining claimant or operator may modify the proposed occupancy to conform with the conditions of § 3715.1 or § 3715.2 of this subpart and resubmit the materials to the authorized officer.

(j) Following a determination of non-concurrence, occupancy shall not be initiated by the mining claimant or operator.

(k) Occupancy authorized by this subpart shall not be subject to the time limitations of § 8365.1–2 of this title.

§ 3715.4 Standards of use or occupancy.

(a) In all circumstances, use or occupancy shall prevent or avoid unnecessary or undue degradation of the public lands and resources.

(b) No use or occupancy shall be initiated until the operator is in possession of all required State mining, reclamation, and waste disposal permits, approvals, or other authorizations.

(c) All uses and occupancies shall conform to all applicable Federal and State environmental standards, including the acquisition of any permits that may be required, prior to commencement of activities. This includes, but is not limited to, permits, authorizations, and standards granted by or as required by the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*).

(d) Prospecting or exploration, as defined in this subpart, that involves only surface activities, shall not involve the placement of permanent structures on public lands. Any temporary structures placed on public lands in conjunction with prospecting or exploration are allowable only for the duration of such activities, unless expressly allowed in writing by the authorized officer to remain on the public lands. Mining operations, as defined in this subpart, may involve the placement of permanent structures on public lands.

(e) All permanent structures or temporary structures placed on public lands shall conform with the appropriate State or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If required by local codes, use or occupancy involving permanent structures shall only be initiated after a certificate of occupancy or its equivalent has been issued. If required by State or local law, appropriate sewerage and sanitation permits shall be acquired by the operator prior to the occupancy or use of a permanent structure placed on the public lands.

(f) Unless expressly allowed in writing to remain on the public lands by the authorized officer, all permanent structures, temporary structures, material, equipment, or other personal property placed on public lands during the use or occupancy covered by this subpart shall be removed within 180 days after termination of operations, as was reported in the filing required under § 3715.3(f). This provision shall not apply to seasonal operations that are temporarily suspended and expected to continue during the next operating season, or operations that are temporarily suspended due to market or labor conditions.

(1) Thirty days before the close of the 180 day period following termination of operations, the authorized officer will order, in writing, the removal of any remaining property.

(2) Any such property left on the public lands beyond the 180-day period shall become the property of the United States, and shall be subject to removal and disposition by the authorized officer consistent with such laws and regulations applicable to such property. The owner of any such property removed and disposed of by the authorized officer shall be liable for the costs incurred by the Government in such removal and disposal.

§ 3715.5 Prohibited acts.

In addition to the restrictions on use and occupancy of unpatented mining claims imposed by § 3712.1 of this part, the following acts are prohibited:

(a) The placement, construction, maintenance, or use of cabins, buildings, trailers, motor homes, tents, or other structures and vehicles used for occupancy not meeting:

(1) The conditions of occupancy under § 3715.2 of this subpart; and

(2) One or more of the standards of occupancy under § 3715.4 of this subpart;

(b) Initiation of occupancy prior to the filing, review, and approval, modification, or rejection of a plan of operation as required under subpart 3802 or 3809 of this title;

(c) Initiation of occupancy prior to consultation with the authorized officer as required by § 3715.3 of this subpart for activities that do not require a plan of operations under subpart 3802 of this

title, or that are defined as casual use or notice activities under subpart 3809 of this title.

(d) Initiation of occupancy after a determination of non-concurrence has been made by the authorized officer that the proposed occupancy or fencing will not conform to the provisions of § 3715.1, § 3715.2 or § 3715.4 of this subpart;

(e) Failure to comply with any order pertaining to non-compliance with the provisions of this subpart within the time frames provided by the order;

(f) Preventing or obstructing free passage or transit over or through public lands by force, threats, or intimidation;

(g) The placement, construction, or maintenance of enclosures, gates, fences, or signs without the concurrence of the authorized officer;

(h) Causing a fire or safety hazard, or creating a public nuisance; and

(i) Conducting activities on public lands that are not incident to prospecting, discovery, development, extraction, and processing of mineral deposits or uses reasonably incident thereto, including but not limited to: Non-mining related habitation, cultivation, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of materials or waste that are generated elsewhere and brought onto public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; hobby and curio shops; cafes; tourist stands; hunting and fishing camps.

§ 3715.6 Inspection and enforcement.

(a) The authorized officer will physically inspect all structures, equipment, workings, and uses located on public lands. Such inspection may include verification of reasonably incident use or occupancy, and the nature of such use or occupancy, including compliance with § 3715.4 of this subpart. Indoor inspections of authorized structures used solely for residential purposes will not be performed unless permitted by an occupant.

(b) If a use or occupancy is not reasonably incident, and fails to meet the standards for occupancy set forth in § 3715.4 (a) through (c) or (e) of this subpart, the authorized officer may order an immediate, temporary suspension of occupancy prior to and during the pendency of an appeal, pursuant to § 3715.9 of this subpart, if necessary to protect health, safety, or the environment. The order shall specify:

(1) How the operator is failing or has failed to comply with the requirements of this subpart; and

(2) The actions that the mining claimant or operator shall take to correct the noncompliance, the time by which occupancy shall be suspended, and the time, not to exceed 30 days, within which corrective action shall be completed.

(c) If a use or occupancy is not reasonably incident and there is an existing occupancy as specified in § 3715.7 of this subpart, the occupant shall apply within 60 days after the date of notice from the authorized officer for appropriate authorization under the regulations in Group 2900 of this title.

(d) If the use or occupancy is reasonably incident but the occupancy fails to meet the standards for occupancy set out in § 3715.4 of this subpart, the authorized officer shall issue an order that specifies:

(1) How the operator is failing or has failed to comply with the requirements of this subpart; and

(2) The actions that the mining claimant or operator shall take to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started. If corrective action is not initiated within the time allowed, the authorized officer may order an immediate, temporary suspension of occupancy pursuant to paragraph (b) of this section.

(e) If there is an additional activity being conducted on the site that may be authorized only under the regulations of Group 2900 of this title, the authorized officer may order the mining claimant or authorized occupant to apply within 30 days for appropriate authorization under the regulations in Group 2900 or suspend the occupancy.

(f) Upon failure of an occupant to comply with the orders of the authorized officer, the authorized officer may request the Attorney General to institute a civil action in an appropriate United States District Court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of the regulations of this subpart.

§ 3715.7 Existing occupancy.

(a) Operators or mining claimants occupying public lands under the mining laws on the effective date of this subpart may continue their occupancy for one year after that date, provided:

(1) They provide the authorized officer with written notification of the existence of the occupancy by [60 days after effective date of final rule]; and

(2) There is no pending formal action by the Secretary adverse to the operator or mining claimant concerning occupancy.

(b) The written notification shall consist of the same materials that would ordinarily be submitted under § 3715.3 of this subpart.

(c) Any mining claimant or operator who fails to provide such written notice may be subject to the administrative remedies, or the appropriate civil or criminal penalties of § 3715.6 and § 3715.8 of this subpart.

(d) One year after the effective date of this regulation all existing occupancy shall meet the requirements of § 3715.1, § 3715.2, § 3715.3, and § 3715.4 of this subpart. The authorized officer will order any existing occupancy failing to meet the requirements of these sections to cease, and the land to be reclaimed to the satisfaction of the authorized officer, unless otherwise expressly authorized.

(e) Occupancy continuing after one calendar year past the effective date of these regulations that has failed to meet the conditions or standards of § 3715.1, § 3715.2, and § 3715.4 of this subpart, and that has not been expressly permitted by the authorized officer, will be subject to administrative remedies, or the civil or criminal penalties set forth in § 3715.6, and § 3715.8 of this subpart.

§ 3715.8 Penalties.

(a) Any person who knowingly and willfully violates the standards under § 3715.4 or § 3715.5 of this subpart is subject to arrest and trial by the United States magistrate and, if convicted, shall be subject to a fine of no more than $1,000 or imprisonment not to exceed twelve months, or both, for each offense.

(b) Whoever in any matter under this subpart knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, is subject to arrest and trial by a United States magistrate and, if convicted, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 3715.9 Appeals.

(a) Any operator or mining claimant adversely affected by a decision or a determination of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Interior Board of Land Appeals, Office of Hearings and Appeals, pursuant to

part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal to the State Director shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of receipt of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. Except for an order requiring an immediate, temporary suspension of occupancy, issued under § 3715.6(b) of this subpart, a request for a stay may accompany the appeal and be granted if appropriate.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant;

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal; and

(3) A statement of the reasons for the appeal and the reasons which would justify reversal or modification of the decision.

(d) The State Director will promptly render a decision on the appeal. The decision will be in writing and will set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(f) All decisions or approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision of approval of the authorized officer under this subpart. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards: (1) The relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of irreparable harm to the appellant or resources if the stay is not granted, and (4) whether public interest favors granting the stay.

(g) Neither the decision of the authorized officer nor that of the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

Dated: June 4, 1992.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

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Reader Aids

Federal Register

Vol. 57, No. 177

Friday, September 11, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

39597-40070.....1
40071-40300.....2
40301-40590.....3
40591-40826.....4
40827-41052.....8
41053-41374.....9
41375-41640.....10
41641-41852.....11

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

2.....40024
3.....40024
11.....40024

3 CFR

Executive Orders:
12722 (See DOT rule of August 21).....39603
12724 (See DOT rule of August 21).....39603
12735 (See State Dept. final rule of Aug. 24).....41077
12775 (See DOT rule of August 17).....39603
12779 (See DOT rule of August 17).....39603
Administrative Orders:
Presidential Determinations:
No. 92-39 of August 17, 1992.....40071
No. 92-40 of August 17, 1992.....40073
No. 92-42 of August 25, 1992.....40075
No. 92-43 of August 25, 1992.....40077
No. 92-44 of August 25, 1992.....40079
Proclamations:
6467.....40591
6468.....40827
6469.....41051
6470.....41373

5 CFR

550.....40070

7 CFR

2.....40829
210.....40729
800.....40301
1207.....40081
1427.....40593
Proposed Rules:
319.....40872
1744.....39628
1902.....39631
1930.....39631
1944.....39635

8 CFR

204.....41053
214.....40830
251.....40830
258.....40830

9 CFR

Proposed Rules:
75.....40139
92.....41549
124.....40493
307.....40623
310.....40623

10 CFR

11.....41375
25.....41376
35.....41376
50.....41378
600.....40083
605.....40582
Proposed Rules:
1023.....40345

11 CFR

200.....39743

12 CFR

3.....40302
204.....40597
225.....41381, 41641
250.....40597, 41643
262.....41641
265.....40597
545.....40085
562.....40085
563.....40085
563c.....40085
571.....40085
Proposed Rules:
208.....39641
225.....39641
509.....40350
516.....40350
528.....40350
541.....40350
543.....40350
545.....40350
552.....40350
556.....40350
558.....40350
559.....40350
561.....40350
563.....40140, 40350, 40524
563b.....40350
563e.....40350
567.....40143, 40147, 40350, 40524
571.....40350, 40524
579.....40350
580.....40350
1625.....39743

13 CFR

121.....41068

14 CFR

13.....40094
21.....41069, 41072, 41360
23.....41069 41072
36.....41360

39.....40307–40313, 40601, 40835–40838
43.....41360
71.....40095, 40096
91.....41360
97.....41074, 41075
147.....41360
200.....40097
203.....40097
205.....40097
206.....40097
231.....40097
232.....40097
263.....40097
288.....40097
294.....40097
296.....40097
297.....40097
298.....40097
302.....40097
372.....40097
399.....40097
1214.....41077

Proposed Rules:
39.....40359, 40623, 40624, 41114, 41115, 41439
71.....40148–40156, 41441–41445
101.....41628

15 CFR
60.....40840

Proposed Rules:
946.....40877

16 CFR
305.....41388
1115.....39597

Proposed Rules:
229.....41706
230.....41707
232.....41706

17 CFR
4.....41173
16.....40601
19.....41389
30.....40603

Proposed Rules:
33.....40626

19 CFR
10.....40314, 40604
141.....40605
145.....40255
171.....40605
172.....40605

Proposed Rules:
4.....40627
141.....40361
142.....40361
143.....40361
151.....40361
191.....41446

20 CFR
655.....40966

Proposed Rules:
626.....41447
627.....41447
628.....41447
629.....41447
630.....41447
631.....41447
637.....41447

21 CFR
5.....40315–40318
573.....40318

Proposed Rules:
131.....40255
310.....40944

22 CFR
121.....41077

24 CFR
25.....40111
91.....40038
135.....40111
570.....40038
905.....40113

25 CFR

Proposed Rules:
211.....40298
212.....40298

26 CFR
1.....40118, 40319, 40841, 41079, 41644
602.....40118, 40319, 41079, 41644

Proposed Rules:
1.....39743, 40378, 41707
49.....41549

27 CFR
5.....40323
20.....40847
53.....40324
70.....40327
194.....39597

Proposed Rules:
4.....40380, 40884
5.....40884
250.....40885
251.....40886
252.....40887
290.....40889

28 CFR
2.....41391–41394
50.....39598
80.....39598

Proposed Rules:
2.....41450

29 CFR
506.....40966
2200.....41676

Proposed Rules:
403.....41634

30 CFR
935.....41690
944.....41692

Proposed Rules:
75.....40395
920.....41712
950.....41714, 41715

31 CFR
10.....41093
204.....40239
315.....39601
353.....39601
358.....40607
550.....41696
575.....39603
580.....39603

Proposed Rules:
270.....41117

32 CFR
60.....40849
220.....41096
323.....40608
701.....40609
706.....41698
806.....41396
1906.....39604

Proposed Rules:
317.....40397

33 CFR
3.....39613
100.....40125, 40609, 40610, 41419, 41420
117.....39614
135.....41104
136.....41104
137.....41104
157.....40494
165.....40125, 40330, 40612, 41421
334.....40612

36 CFR

Proposed Rules:
51.....40496
1191.....41006

37 CFR
1.....40493
2.....40493
202.....39615

38 CFR
3.....40944
17.....41700
21.....40613
36.....40615

Proposed Rules:
3.....40424
21.....41451

39 CFR

Proposed Rules:
111.....39646, 40890, 41716

40 CFR
52.....40126, 40331–40336
55.....40792
136.....41830
148.....41173
180.....40128
260.....41173, 41566
261.....41173, 41566
262.....41173
264.....41173
265.....41173
266.....41566
268.....41173
270.....41173
271.....41173, 41566, 41699
279.....41566
414.....41836

Proposed Rules:
52.....40157, 40159, 41716
62.....40628
122.....41344
180.....40161–40163
300.....39659, 41452
372.....10820
721.....10820

42 CFR
410.....39743
412.....39746
413.....39746

Proposed Rules:
100.....41809

43 CFR

Public Land Orders:
6943.....39616

Proposed Rules:
3710.....41846

44 CFR
64.....39617, 41104
67.....39619

45 CFR
641.....40337

46 CFR
30.....41812
32.....41812
35.....41812
70.....41812
78.....41812
90.....41812
97.....41812
107.....41812
108.....41812
109.....41812
167.....41812
169.....41812
170.....41812
171.....41812
184.....41812
185.....41812
188.....41812
196.....41812
272.....39621
298.....39621
510.....39622, 40129
514.....39622
560.....40616
572.....40616
580.....39622
582.....39622

47 CFR
63.....41106, 41109
73.....39624, 39625, 40342, 40849, 41698, 41700
74.....41110
90.....40850
95.....40343
97.....40343

Proposed Rules:
Ch. I.....39661
2.....40630
13.....41718
15.....40630
22.....40630
25.....40425, 40426, 40891
61.....40426
63.....41118
69.....40426
73.....39663, 41719
99.....40630

48 CFR
31.....40344
215.....41422
252.....41422
270.....41422
1801.....40851

1803.....40851
1804.....40851
1805.....40851
1806.....40851
1807.....40851
1808.....40851
1809.....40851
1813.....40851
1815.....40851
1816.....40851
1819.....40851
1822.....40851
1823.....40851
1825.....40851
1827.....40851
1831.....40851
1832.....40851
1833.....40851
1836.....40851
1837.....40851
1842.....40851
1845.....40851
1849.....40851
1851.....40851
1852.....40851
1853.....40851
1870.....40851

Proposed Rules:
45.....40891

49 CFR

1.....40620
350.....40946
355.....40946
396.....40946
571.....40131, 41423, 41428
588.....41428
1003.....41111
1039.....40620
1109.....39743
1313.....40620
1321.....40857

Proposed Rules:
192.....41119
218.....41454
571.....40165
1002.....39743, 41459
1018.....41459
1039.....39663, 41122
1145.....41122
1312.....41459
1313.....41459
1314.....41459

50 CFR

20.....40032
204.....40858
216.....41701
217.....40859, 40861, 41703
227.....40859, 40861, 41703
299.....40858
653.....40134
661.....39626, 40135, 40136, 40622, 41705
663.....40136, 41112
672.....40137, 40255
681.....41112
683.....40255

Proposed Rules:
17.....39664, 40429
216.....40166
217.....41123
227.....41123
611.....40493
685.....40493

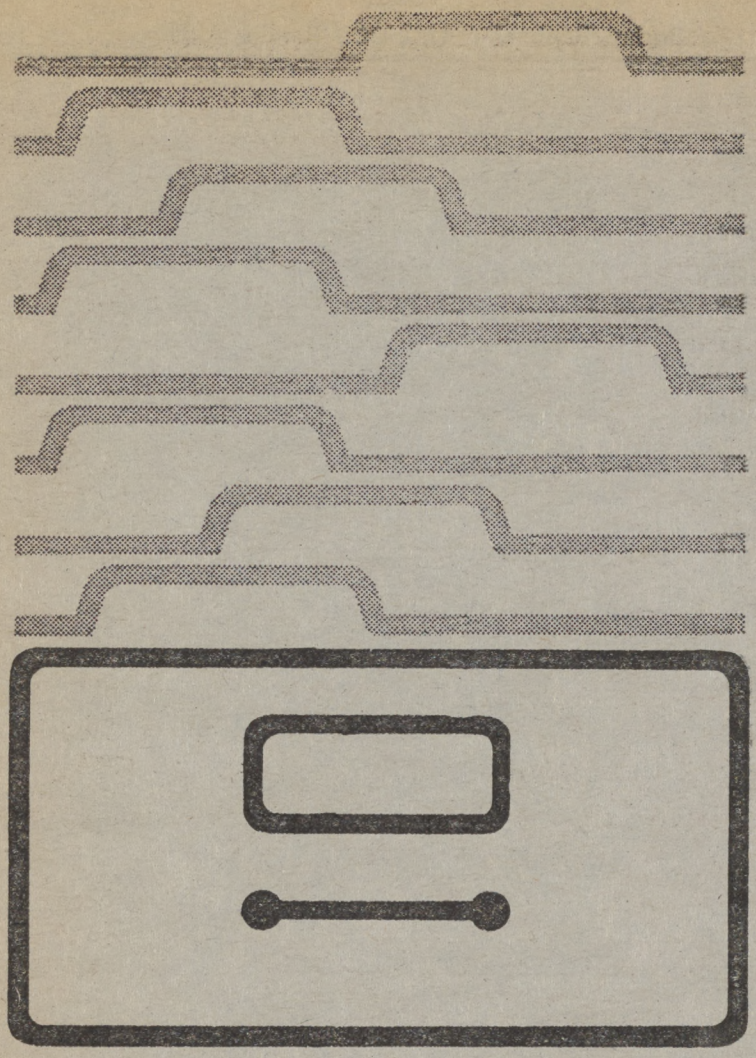
LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 3033/P.L. 102-367

Job Training Reform Amendments of 1992. (Sept. 7, 1992; 106 Stat. 1021; 96 pages) Price: $2.75

Last List September 10, 1992



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

The GUIDE to record retention is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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