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Friday
September 22, 1995

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WASHINGTON, DC

[Two Sessions]

WHEN:	October 17 at 9:00 am and 1:30 pm
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

Contents

Federal Register

Vol. 60, No. 184

Friday, September 22, 1995

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.

7 CFR
Proposed Rules:
1220.....49236

8 CFR
214.....49195

10 CFR
210.....49195
211.....49195
212.....49195
303.....49195
305.....49195
459.....49195
465.....49195
730.....49195
761.....49195
762.....49195
763.....49195
790.....49195
791.....49195
792.....49195
794.....49195
796.....49195
797.....49195
798.....49195
799.....49195
1020.....49195

12 CFR
900.....49198
922.....49198

26 CFR
1 (2 documents) 49199, 49218
31.....49199
602 (2 documents) 49199, 49218
Proposed Rules:
1.....49236

33 CFR
1.....49222
Proposed Rules:
166.....49237

38 CFR
4.....49225

40 CFR
228.....49228
300.....49230
763.....49231
Proposed Rules:
260.....49239
264.....49239
265.....49239
281.....49239

47 CFR
64.....49232
73 (2 documents) 49234
Proposed Rules:
15.....49241
73 (3 documents) 49241, 49242

49 CFR
382.....49322

50 CFR
678.....49235
Proposed Rules:
260.....49242

Rules and Regulations

Federal Register
Vol. 60, No. 184
Friday, September 22, 1995

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1727–95]

RIN 1115–AE22

Adding Daytona, Florida and Memphis, Tennessee to the List of Ports of Entry Accepting Applications for Direct Transit Without Visa

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by adding Daytona, Florida, and Memphis, Tennessee, to the list of ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States for direct transit without visa. This change is necessary to accommodate the increase in international commerce serving Daytona, Florida, and Memphis, Tennessee.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: This final rule adds Daytona, Florida, and Memphis, Tennessee, to 8 CFR 214.2(c)(1) as ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Daytona Beach International Airport in Daytona, Florida, will be adding additional international passenger service, specifically arrivals transiting between Frankfurt, Germany, and San Andrés, Colombia. The Memphis International Airport in Memphis, Tennessee, has added international passenger service which will be arriving from Amsterdam, The Netherlands, transiting to Canada, Mexico, and the Caribbean. By allowing these airports to accept applications for direct transit without visa, both Daytona and Memphis will be able to accommodate these transit air passengers.

The Service's implementation of this rule as a final rule is based on the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and necessity for immediate implementation are as follows: This rule is necessary to accommodate the increase in international carriers serving Daytona, Florida, and Memphis, Tennessee, and to facilitate travel for the public.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely allows the Daytona, Florida, and the Memphis, Tennessee, airports to accommodate international passengers by providing authority to accept applications for direct transit without visa. This rule with facilitate travel for the public.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and Visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

§ 214.2 [Amended]

2. In § 214.2, paragraph (c)(1) is amended, in the fourth sentence, by adding ''Daytona, FL,'' immediately after ''Dallas, TX,'' and by adding ''Memphis, TN,'' immediately after ''Los Angeles, CA,'' to the listing of ports of entry authorized to accept direct transit without visa applications.

Dated: September 13, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–23500 Filed 9–21–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF ENERGY

10 CFR Parts 210, 211, 212, 303, 305, 459, 465, 730, 761, 762, 763, 790, 791, 792, 794, 796, 797, 798, 799, and 1020

Removal of Obsolete Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Code of Federal Regulations (CFR) to remove obsolete regulations. This action is being taken in response to the President's Regulatory Reform Initiative to eliminate obsolete regulations and streamline existing rules. The Department has targeted 33 percent of all CFR pages for elimination, and has now completed the elimination of 21 percent of all such pages.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Romulo L. Diaz, Jr., Director, Rulemaking Support, Office of the General Counsel, (GC–75), U.S.

Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: In connection with the President's Regulatory Reinvention Initiative, the Department of Energy is engaged in a continuing and comprehensive review of its regulatory program. As part of that in depth review, the Department is removing from Title 10 of the CFR those regulations for which statutory authority has expired or been superseded by subsequent legislation, as well as regulations governing nonfunctioning and unfunded programs.

Several of the regulations being eliminated with this notice were included in the Department's November 14, 1994, Notice of Inquiry (59 FR 56421) seeking public input concerning specific regulations targeted for modification or elimination. No comments were received concerning the Notice of Inquiry.

Since the publication of the Notice of Inquiry, the Department expanded the number of regulations identified as obsolete and has included them in this notice for removal from the CFR.

The Department has reviewed all of its regulations and has identified obsolete regulations for removal as follows:

10 CFR Parts 210, 211 and 212—Mandatory Petroleum Price and Allocation Regulations

The Emergency Petroleum Allocation Act of 1973 (P.L. 93–159, as amended), authorizing the regulation of the allocation and pricing of crude oil and petroleum products, expired in 1981. The Department is eliminating the following sections from 10 CFR: 210.61, Part 211 (including Appendix A), 212.10, 212.126–7, and Appendix A to Part 212. Also being removed are Department of Energy Rulings 1974–1 through 1984–1 in Chapter II, Subchapter A which relate to the application of petroleum price and allocation regulations.

10 CFR Parts 303 and 305—Coal Utilization Program

The Energy Supply and Environmental Coordination Act of 1974 (ESECA), (P.L. 93–319), authorized the Federal Energy Administration (one of the Department's predecessor agencies) to require existing and new powerplants and major fuel burning facilities to burn coal rather than natural gas or petroleum products as their primary energy source. The regulations at 10 CFR Parts 303 and 305 establish the procedures and sanctions for ESECA's coal utilization program.

The Department's authority to issue orders and operate the ESECA coal utilization program was superseded by passage of the Powerplant and Industrial Fuel Use Act of 1978, (P.L. 100–42). Elimination of these regulations will not affect the recipients of prior ESECA orders. Should any existing orders require modification or recision, other administrative procedures within the Department will be utilized.

10 CFR Part 459—Residential Energy Efficiency Program

This part sets forth the procedures for awarding and administering financial assistance under the Residential Energy Efficiency Program. Authority for this program expired on June 30, 1989, (P.L. 99–412, § 105).

10 CFR Part 465—Energy Extension Service

Authority for the Energy Extension Service was repealed on October 24, 1992, (P.L. 102–486, Title I, § 143(a)).

10 CFR Part 730—Unusual Volumes Allocation Petition Procedure

The Low-Level Radioactive Waste Policy Amendments Act of 1985, (P.L. 99–240), included provisions regulating access by waste generators to commercially-operated, low-level radioactive waste disposal facilities between January 1, 1985, and December 31, 1992, known as the ''interim access period.'' With the expiration of the interim access period, this regulation no longer serves any useful purpose.

10 CFR Parts 761, 762, and 763—Uranium Regulations

For the years 1983 to 1992, the Department was required to report annually to the Congress and the President on the viability of the domestic uranium mining and milling industry, (P.L. 97–415, § 23). Specific criteria to be assessed in these annual reports were established in Part 761. Although the Energy Policy Act of 1992 (EPAct) requires the Department to report annually on the domestic uranium industry, the criteria in Part 761 do not apply to the Department's current reporting requirement, (P.L. 102–486, Title X).

Part 762 established the terms and condition under which the Department offered uranium enrichment services to its civilian customers. Part 763 determined how the Department would assess late payment charges for uranium enrichment services. The statutory authority for these regulations was superseded by the passage of EPAct, which, among other things, transferred the uranium enrichment function from the Department to the United States Enrichment Corporation.

10 CFR Part 790—The Geothermal Loan Guaranty Program

Authority for this program was granted on a year-to-year basis. Congress last authorized the issuing of loan guarantees for the commercial development of geothermal resources in 1981 and is unlikely to reinstate the program.

10 CFR Part 791—Electric and Hybrid Vehicle Research, Development, Demonstration, and Product Loan Guarantees

Authority for issuing loan guarantees to qualified borrowers for research, development, and production of electric and hybrid vehicles and components expired in September 1983, (P.L. 94–413, § 10).

10 CFR Part 792—Loans for Reservoir Confirmation Projects

Authority for issuing loan guarantees to finance the exploration and confirmation of geothermal reservoirs expired on September 30, 1986, (P.L. 96–294, § 614).

10 CFR Part 794—Loans for Development of Wind Energy Systems and Small Hydroelectric Power Projects

Authority for issuing loans for the development of wind energy projects expired September 30, 1988, (P.L. 96–345). Authority for issuing loans for the development of small hydroelectric power projects expired on September 30, 1980, (P.L. 95–617).

10 CFR Part 796—Federal Loan Guarantees for Alternative Fuel Demonstration Facilities

Authority for this program was granted on a year-to-year basis. The Congress last authorized the issuing of loan guarantees for alternative fuels demonstration facilities in 1982 and is unlikely to reinstate the program.

10 CFR Part 797—Loans for Small Hydroelectric Power Project Feasibility Studies and Related Licensing

No funds for this loan guarantee program were appropriated after 1981.

10 CFR Part 798—Urban Wastes Demonstration Facilities Loan Guarantee Program

Authority for issuing loan guarantees for urban wastes demonstration facilities expired September 30, 1984, (P.L. 96–294).

10 CFR Part 799—Loans Guarantees for Alcohol Fuels, Biomass Energy and Municipal Waste Projects

Authority for issuing loan guarantees for alcohol fuels, biomass energy and municipal waste projects expired September 30, 1984, (P.L. 96–294).

10 CFR Part 1020—Grand Junction Remedial Action Criteria

The regulation sets forth criteria for remediating certain properties in Grand Junction, Colorado, that were contaminated with uranium mill tailings. P.L. 92–314 authorized the cleanup of such properties, upon application of the affected property owners before June 16, 1980. The Grand Junction remedial action program under this law ended in 1987.

Rulemaking Analyses

Regulatory Planning and Review

The elimination of obsolete regulations does not constitute a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (58 FR 51735); therefore, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department certifies that this rulemaking will not have a ''significant economic impact on a substantial number of small entities.''

National Environmental Policy Act

This rule amends Title 10 of the Code of Federal Regulations by removing regulations for which statutory authority has expired or been superseded by subsequent legislation, as well as regulations governing nonfunctioning and unfunded programs. This rulemaking will not change the environmental effect of the regulations being amended because they are already obsolete regulations which have no current environmental effect. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Final Rulemaking

As the foregoing discussion indicates, most of the Code of Federal Regulation parts being removed are based on statutory authorities that have expired, been executed or been superseded. The remainder of the regulations being removed involve loan or loan guarantee authorities for which there has not been an appropriation since the early 1980's. Although these statutory authorities have not expired technically, the regulations are dormant because there is no reason to expect that the President will request, or that Congress will again provide, an appropriation. In the Department's view, retention of dormant regulations could not serve any useful purpose. Accordingly, the Department has determined, pursuant to 5 U.S.C. 553, that there is good cause to conclude that prior notice and opportunity for public comment is unnecessary and contrary to the public interest.

List of Subjects

10 CFR Part 210

Petroleum allocation, Petroleum price regulations.

10 CFR Part 211

Oil Imports, Petroleum allocation, Reporting and recordkeeping requirements.

10 CFR Part 212

Petroleum price regulations, Reporting and recordkeeping requirements.

10 CFR Part 303

Administrative Practice and Procedure, Air pollution control, Coal Conversion program, Investigations, Penalties.

10 CFR Part 305

Coal conversion program, electric power plants, energy conservation, environmental impact statements.

10 CFR Part 459

Energy conservation, Grant programs—energy, Housing

10 CFR Part 465

Administrative Practice and Procedure, Energy conservation, Grant programs, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

10 CFR Part 730

Hazardous waste, Nuclear Power Plants and reactors.

10 CFR Part 761

Public lands—mineral resources, Reporting and Recordkeeping requirements, Uranium.

10 CFR Part 762

Nuclear materials, Uranium.

10 CFR Part 763

Nuclear materials, Uranium.

10 CFR Part 790

Geothermal energy, Loan programs—energy, Research.

10 CFR Part 791

Electric power, Energy conservation, Loan programs—energy, Motor vehicles, Research, Small businesses.

10 CFR Part 792

Geothermal energy, Loan programs—energy.

10 CFR Part 794

Electric power, Energy conservation, Loan programs—energy.

10 CFR Part 796

Administrative practice and procedure, Coal conversion program, Energy conservation, Grant programs—housing and community development, Loan Programs—energy, Petroleum, Reporting and Recordkeeping requirements, Research.

10 CFR Part 797

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, research.

10 CFR Part 798

Energy, Loan programs—energy, Waste treatment and disposal.

10 CFR Part 799

Administrative practice and procedure, Alcohol and alcoholic beverages, Energy conservation, Loan programs—energy, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 1020

Radiation Protection, Uranium.

Issued in Washington, DC on September 18, 1995.

Robert R. Nordhaus,

General Counsel.

For the reasons set forth in the preamble, under the authority of 42

U.S.C. 7101, Chapter II, III, and X of title 10 of the Code of Federal Regulations are amended by removing parts 211, 303, 305, 459, 465, 730, 761, 762, 763, 790, 791, 792, 794, 796, 797, 798, 799, and 1020.

Title 10 of the Code of Federal Regulations is further amended as follows:

PART 210—GENERAL ALLOCATION AND PRICE RULES

1. The authority citation for part 210 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, EO 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub L. 92–210, 85 Stat. 743; Pub L. 93–28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47; 39 FR 24.

Subpart D [Removed]

2. Subpart D, which includes § 210.61, of part 210 is removed.

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

3. The authority citation for Part 212 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, EO 11748, 38 FR 33577; Economic Stabilization Act of 1970, as amended, Pub L. 92–210, 85 Stat. 743; Pub L. 93–28, 87 Stat. 27; E.O. 11748, 38 FR 33575; Cost of Living Council Order Number 47; 39 FR 24.

Subpart A, Subpart I, Appendix A to Part 212—[Removed]

4. Subpart A, which consists of § 212.10, Subpart I, which consists of §§ 212.126 and 212.127, and Appendix A to Part 212 are removed.

Appendix A to Subchapter A—DOE Rulings [Removed]

5. 10 CFR Chapter II, Subchapter A—Oil, is amended by removing Appendix A to Subchapter A—DOE Rulings.

[FR Doc. 95–23567 Filed 9–21–95; 8:45 am]
BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900 and 922

[No. 95–23]

Revision of Board of Directors Reporting Requirements

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board is amending its regulation on Board of Directors Responsibilities and Conduct to eliminate the required submission of Form FB–1, the Personal Certification and Disclosure Form, and the certification and disclosure requirements applicable to the four Federal Housing Finance Board Directors appointed by the President upon appointment and annually thereafter, in order to avoid duplicative and burdensome reporting requirements.

EFFECTIVE DATE: This final rule is effective on September 22, 1995.

FOR FURTHER INFORMATION CONTACT: David A. Guy, Associate General Counsel, Office of General Counsel, (202) 408–2536, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

As a result of an ongoing internal review of its regulations, the Federal Housing Finance Board (Board) has identified the certification and disclosure requirements applicable to the four Board Directors appointed by the President, by and with the advice of the Senate (appointed Board Directors), *see* 12 U.S.C. 1422a(b)(1)(B), upon appointment and annually thereafter, *see* 12 CFR 922.6(a), (c), and the use of Form FB–1, *see id.* §§ 922.7, 900.51, as unnecessarily burdensome and duplicative. Accordingly, the Board intends to eliminate Form FB–1 and the certification and disclosure requirements.

Currently, under § 922.6 of the Board's regulations, each appointed Board Director, upon appointment and annually thereafter, must certify in writing to the Board's designated agency ethics official (DAEO) on Form FB–1, that he or she meets all of the requirements for appointment mandated by the Federal Home Loan Bank Act (Bank Act) and part 922, and, further, must disclose in writing to the DAEO on Form FB–1, certain financial relationships with any member of any Federal Home Loan Bank (FHLBank). *See id.* § 922.6(a), (c).

Both the Bank Act and part 922 of the Board's regulations require that appointed Board Directors be citizens of the United States, *see* 12 U.S.C. 1422a(b)(1)(B), 12 CFR 922.2(a), and prohibit appointed Board Directors from serving as a director or officer of any FHLBank or any member of any FHLBank, or holding shares of, or any other financial interest in, any member of any FHLBank. *See* 12 U.S.C. 1422a(b)(2)(C), 12 CFR 922.3. In addition to the duty of an appointed Board Director to comply with the law, Part 922 imposes on each appointed Board Director an affirmative obligation to obey the regulations and policies established by the Board. *See* 12 CFR 922.2(b). The additional requirement that appointed Board Directors certify their compliance with the mandatory conditions for appointment is unnecessarily burdensome.

The financial disclosures required of appointed Board Directors under part 922 also are unnecessarily burdensome and duplicative. Under the Ethics in Government Act of 1978, as amended, 5 U.S.C. App. 101, *et seq.*, and the implementing regulations promulgated by the Office of Government Ethics (OGE), 5 CFR Part 2634, appointed Board Directors already are required to disclose, as a part of the Senate confirmation process and annually thereafter in writing to the DAEO and the OGE, detailed information regarding their financial interests, including the information required to be reported to the DAEO on Form FB–1. *See* 5 U.S.C. App. 101(c), 5 CFR 2634.201, 2634.202. In fact, the financial disclosures required by the OGE are more exacting than the financial disclosures required under part 922.

Part 922 also requires that, if an appointed Board Director knows or suspects at any time that he or she does not meet any of the statutory or regulatory requirements for appointment, he or she must report the specific factual basis for noncompliance to the DAEO in writing on Form FB–1 within 30 days of the date noncompliance did or may have occurred. *See* 12 CFR 922.6(b). Because contemporaneous disclosure of known or suspected noncompliance is not otherwise required, the Board will retain this written disclosure requirement, although it will no longer require that appointed Board Directors report the noncompliance on Form FB–1. Further, the phrase ''suspected noncompliance'' is being substituted for the phrase ''should have known of the noncompliance'' in 12 CFR 922.6(b) because it forms a more reasonable basis for a report of this kind.

II. Analysis of the Final Rule

Since the certification and disclosure requirements applicable to appointed Board Directors upon appointment and annually thereafter, and the use of Form FB–1 currently required by § 922.6(a) and (c), and § 922.7 of the Board's regulations, are unnecessarily burdensome and duplicative for the reasons stated in part I of the Supplementary Information, repeal of these sections is appropriate.

Repeal of these provisions of parts 900 and 922 also will be consistent with the goal of the Vice President's National Performance Review to reduce the total number of regulations of executive agencies. *See* Report of the National Performance Review 32–33 (Sept. 17, 1993); E.O. 12861, 58 FR 48255 (Sept. 11, 1993).

For the foregoing reasons, the Board has decided to repeal § 922.6(a) and (c) and § 922.7, and to amend § 922.6(b) and § 900.51 of its regulations, pursuant to its general rulemaking authority under section 2B(a)(1) of the Bank Act. *See* 12 U.S.C. 1422b(a)(1).

III. Notice and Public Participation

Publication of notice of proposed rulemaking is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, because the Board, for good cause, finds that the notice and comment procedure is unnecessary and contrary to the public interest in this instance. *See id.* § 553(b)(3)(B). Compliance with the public notice and comment procedure requirement of APA section 553 is unnecessary because the final rule makes only minor changes to the disclosure requirements imposed on appointed Board Directors, repeals provisions of the Board's regulations that have no effect on the public, and eliminates unnecessarily burdensome and duplicative regulations.

IV. Effective Date

For the reasons stated in part III of the Supplementary Information, the Board finds that, under APA section 553(d)(3), there is good cause for the final rule to become effective upon publication.

V. Regulatory Flexibility Act

The Board is adopting the changes to parts 900 and 922 in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply. *See id.* §§ 601(2), 603(a).

List of Subjects

12 CFR Part 900

Organizations and functions (Government agencies).

12 CFR Part 922

Conflict of interests.

Accordingly, Chapter IX, Title 12, parts 900 and 922, Code of Federal Regulations, are hereby amended as follows:

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a).

2. Section 900.51 is revised to read as follows:

§ 900.51 Forms.

The following forms are available at the Finance Board headquarters facility (see § 900.3) and shall be used for the purpose indicated:

Form

10–91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.
9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.
9103—Election Ballot, Election of Federal Home Loan Bank Directors.
A–1—Appointive Director Candidates—Personal Certification and Disclosure Form.
A–2—Appointive Directors—Personal Certification and Disclosure Form.
E–1—Elective Director Nominees—Personal Certification and Disclosure Form.
E–2—Elective Directors—Personal Certification and Disclosure Form.
90–T04—Local Travel Claim.

PART 922—BOARD OF DIRECTORS AND EMPLOYEES RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 922 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b.

2. Section 922.6 is revised to read as follows:

§ 922.6 Duty to report.

If an appointed Board director knows or suspects at any time that he or she does not meet any of the requirements for appointment set forth in sections 2A(b)(1)(B) and 2A(b)(2)(C) of the Act or this part, the appointed Board director shall report the specific factual basis for the known or suspected noncompliance in writing to the Board's designated agency ethics official within 30 days of the date noncompliance did or may have occurred.

§ 922.7 [Removed]

3. Section 922.7 is removed.

Dated: September 14, 1995.

By the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 95–23391 Filed 9–21–95; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[TD 8619]

RIN 1545–AR01

Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions From Qualified Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities. These regulations reflect the changes made by the Unemployment Compensation Amendments of 1992 and affect the administrators, sponsors, payors of, and participants in tax-qualified retirement plans and section 403(b) annuities.

EFFECTIVE DATE: These regulations are effective on October 19, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1341. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per plan administrator/payor/recordkeeper varies from .05 hour to 330 hours, depending on individual circumstances, with an estimated average of .50 hour.

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

Books and records relating to this collection of information must be

retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On October 22, 1992, Temporary Income Tax Regulations (TD 8443) under sections 401(a)(31), 402(c), 402(f), 403(b), and 3405(c) of the Internal Revenue Code (Code) were published in the Federal Register (57 FR 48163). A notice of proposed rulemaking (EE–43–92) cross-referencing the temporary regulations was published in the Federal Register (57 FR 48194) on the same day. The temporary regulations provide guidance for complying with the Unemployment Compensation Amendments of 1992 (UCA). In addition, Notice 92–48 (1992–2 C.B. 381), provides a safe harbor explanation that can be used in order to satisfy section 402(f) of the Code. Written comments were received on the proposed and temporary regulations and a public hearing on the proposed and temporary regulations was held on January 15, 1993.

In response to initial comments on the proposed and temporary regulations, the IRS provided additional guidance under UCA in Notice 93–3 (1993–1 C.B. 293), and Notice 93–26 (1993–1 C.B. 308). The notices solicited public comments concerning the additional guidance.

After consideration of all the comments, the temporary regulations are replaced and the proposed regulations under sections 401(a)(31), 402(c), 402(f), 403(b), and 3405(c) are adopted as revised by this Treasury decision.

Explanation of Provisions

1. Overview

UCA significantly changed the treatment of distributions from qualified plans and section 403(b) annuities. First, under section 402(c), as amended by UCA, all distributions from qualified plans to an employee (or to the employee's spouse after the employee's death) from the ''balance to the credit'' of the employee are ''eligible rollover distributions'' to the extent includible in gross income, except (1) substantially equal periodic payments over life or life expectancy or for a period of ten years or more, and (2) required minimum distributions under section 401(a)(9).

Second, UCA added a new qualification provision under section 401(a)(31) that requires qualified plans to provide employees with a direct rollover option. Under a direct rollover option, an employee may elect to have an eligible rollover distribution paid directly to an individual retirement account or individual retirement annuity, or to another qualified plan that accepts rollovers (collectively referred to as eligible retirement plans). The direct rollover option is provided in addition to the pre-existing rollover provisions under section 402. Thus, an employee who receives an eligible rollover distribution but who does not elect a direct rollover still has the option to subsequently roll over the distribution to an eligible retirement plan within 60 days of receipt.

Third, UCA amended section 3405 to impose mandatory 20-percent income tax withholding on any eligible rollover distribution that the employee does not elect to have paid in a direct rollover. This withholding applies even if the employee receives a distribution and then rolls it over within the 60-day period. (However, where employer securities are distributed, a special rule limits withholding to the value of cash and other property received in the distribution.) To the extent that a distribution is both includible in gross income and not an eligible rollover distribution, the elective withholding rules under section 3405 and § 35.3405–1 continue to apply.

Finally, section 402(f), as amended by UCA, requires that, within a reasonable period of time before making a distribution, the plan administrator give a written explanation (the section 402(f) notice) to the employee of: (1) The availability of the direct rollover option; (2) the rules that require income tax withholding on distributions; (3) the rules under which the employee may roll over the distribution within 60 days of receipt; and, (4) if applicable, the other special tax rules (e.g., five-year averaging) that may apply to the distribution.

Similar rules are provided for section 403(b) annuities. However, a distribution from a section 403(b) annuity may only be rolled over to another section 403(b) annuity or individual retirement plan and not to a qualified plan.

UCA requirements generally apply to distributions from qualified plans and section 403(b) annuities that are made on or after January 1, 1993. (A special delayed effective date applies to certain section 403(b) annuities sponsored by state or local governments.)

In general, comments received on the proposed and temporary regulations were favorable. Thus, the final regulations retain the general structure and substance of the proposed and temporary regulations.

2. Notice 93–3 and Notice 93–26

As discussed above, in response to initial comments on the proposed and temporary regulations, additional guidance under UCA was provided by Notice 93–3, 1993–1 C.B. 293, and Notice 93–26, 1993–1 C.B. 308. The major issues addressed in these notices include the following:

- A distribution that occurs when a participant's accrued benefit is offset by the amount of a plan loan is an eligible rollover distribution if it otherwise qualifies as such. However, the plan need not offer a direct rollover of the offset distribution. For purposes of determining the amount that must be withheld, the offset distribution is treated in the same manner as a distribution of employer securities.
- In determining whether a distribution is a required minimum distribution for purposes of section 402(c), any distribution prior to the year an employee attains (or would have attained) age 70½ is not treated as a required minimum distribution and any annuity distribution paid from a defined benefit plan or an annuity contract in that year or a subsequent year is treated as a required minimum distribution.
- A participant may affirmatively elect to make an immediate direct rollover or receive an immediate payment, provided that the participant has been informed of the right to take at least 30 days, after receiving the appropriate notices, to make this decision.
- Amounts paid under an annuity contract distributed by a qualified plan are payments of the balance to the credit in the qualified plan for purposes of section 402(c) and, thus, are subject to the same UCA rules as distributions from qualified plans (e.g., permitting direct rollover and requiring 20-percent withholding).

The commentary on Notices 93–3 and 93–26 was favorable. Accordingly, the guidance contained in the notices has been incorporated into these final regulations. In addition, certain other revisions have been made to the regulations in response to comments, to clarify certain issues, and to facilitate administration and compliance. The most significant of these revisions are discussed below.

3. Section 402(f) and Other Participant Notices

a. Timing of Notice

As discussed above, the Code requires that the plan administrator provide the section 402(f) notice within a reasonable period of time prior to making an eligible rollover distribution. The

temporary regulations provide that this reasonable time period is the same period required for obtaining consent to a distribution under section 411(a)(11). The regulations under section 411(a)(11) provide that a participant's consent to a distribution is not valid unless the participant receives a notice of his or her rights under the plan, including the right to defer the distribution, no more than 90 days and no less than 30 days prior to the annuity starting date.

The 90/30-day time period was adopted in the temporary regulations under section 402(f) because the IRS and Treasury believed that it was appropriate for the section 402(f) notice to be provided within the same time period in which plan administrators are required to provide other distribution information. In response to initial comments, the IRS and Treasury issued Notice 93–26, which modified the 30-day time period to allow a participant to affirmatively elect to make an immediate direct rollover or receive an immediate payment, but did not change the 90-day time period for either section 402(f) or section 411(a)(11). As discussed above, the final regulations are modified in a manner consistent with the additional guidance provided in Notice 93–26.

Commentators requested an expansion of the 90-day time period. More broadly, commentators asked that the requirements of sections 411(a)(11), 417, and 402(f) be addressed in the context of new technologies that use electronic media, such as telephone or computer systems, to automate plan administrative functions that traditionally have been processed manually by use of paper-based systems (e.g., notices to participants and participant distribution requests). For example, some commentators suggested that plans be permitted to provide an annual written notice if a summary of the notice is provided through these new technologies. In addition, commentators asked that the modification to the 30-day rule permitting immediate payment after an affirmative election, announced in Notice 93–26, be applied to distributions subject to section 401(a)(11) and 417.

The IRS and Treasury continue to believe that the section 402(f) notice (as well as the section 411(a)(11) and section 417 notices) should be provided close to the time participants are considering the distribution to which the notice applies. Therefore, no change to the 90-day rule is made in these final regulations.

Although no additional guidance on the use of electronic media is provided in these final regulations, the IRS and Treasury will continue to consider modifications of the notice and consent requirements that might be appropriate to accommodate new technologies, if adequate safeguards are provided. The IRS and Treasury continue to invite comments on this issue. These final regulations specifically delegate authority to the Commissioner to modify or provide additional guidance in the Internal Revenue Bulletin with respect to the notice requirements of section 402(f). A parallel delegation of authority is provided in the proposed and temporary regulations under sections 411(a)(11) and 417 which are being published in connection with these final regulations.

The proposed and temporary regulations under section 411(a)(11) are modified in a manner consistent with the changes to the 30-day rule described in Notice 93–26. The proposed and temporary regulations under section 417 modify the timing requirement with respect to the notice required by that section. Under this modification, if a participant affirmatively elects a distribution (whether a qualified joint and survivor annuity or an optional form of benefit), the plan may permit the distribution to commence at any time more than seven days after the section 417 notice is given, provided that the distributee has the right to revoke the election until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the section 417 notice is provided.

b. Posting of Notice

In response to questions from commentators, the final regulations clarify that section 402(f) notices must be provided directly to each distributee rather than by posting at the place of employment.

c. Additions to Model Notice

Notice 92–48, 1992–2 C.B. 381, contains the model section 402(f) notice that serves as a ''Safe Harbor Explanation'' for purposes of complying with section 402(f). The IRS is considering developing additional model language to address specific subjects not addressed in the current model notice, including withholding on employer securities, treatment of plan loan offset amounts (including withholding and the timing and availability of a right to roll over), and the $5,000 death benefit exclusion. Until this additional language is published, plan administrators may continue to satisfy section 402(f) by providing the current model notice, even if issues not addressed in the current notice (such as those listed in the preceding sentence) are relevant to the distributee. Plan administrators are encouraged, however, to supplement the model notice with language addressing these issues when applicable to a distributee. The IRS and Treasury invite comments or suggestions concerning possible additions or modifications to the notice.

4. Definition of Eligible Rollover Distribution

As noted above, under section 402(c) and section 403(b), as amended by UCA, all distributions from qualified plans and section 403(b) annuities to an employee (or to the employee's spouse after the employee's death) of any portion of the ''balance to the credit'' of the employee are ''eligible rollover distributions'' to the extent includible in gross income, except (1) substantially equal periodic payments over life or life expectancy or for a period of ten years or more, and (2) required minimum distributions under section 401(a)(9).

a. Benefits Included in the Balance to the Credit

Based on the broad statutory definition of an eligible rollover distribution and the UCA legislative history, the final regulations provide that generally all plan benefits are included in the ''balance to the credit'' of an employee, including ancillary benefits not protected by section 411(d)(6). Therefore, the final regulations do not adopt commentators' suggestions to exclude various items from the definition, such as qualified disability benefits, hardship distributions, and distributions that are includible in gross income but that are made to a distributee reasonably expected to have no income tax liability.

b. Substantially Equal Periodic Payments From a Defined Contribution Plan

The final regulations retain the rule that the principles of section 72(t) apply for purposes of determining whether distributions constitute a series of substantially equal periodic payments. The preamble to the temporary regulations provides that, in determining whether payments in a series are substantially equal for purposes of section 402(c)(4), the principles of Notice 89–25, 1989–1 C.B. 662, are applicable. Notice 89–25 provides guidance for determining whether distributions from a separate account are substantially equal for purposes of section 72(t). Commentators requested guidance on applying the three methods in Notice 89–25 for

determining whether payments are substantially equal over life or life expectancy to payments for a period other than life or life expectancy. In response to these comments, the final regulations provide that payments from a qualified defined contribution plan that are calculated on a declining balance of years will be considered substantially equal. In addition, if a distribution from a defined contribution plan consists of payments of a fixed amount each year until the account balance is exhausted, reasonable actuarial assumptions must be used to determine the period of years over which the payments will be made.

c. Disregard of Contingencies

The final regulations retain the rule that the determination of whether payments are substantially equal for a given period is made when payments commence, without regard to contingencies or modifications that have not yet occurred. Recovery from a disability is added to the final regulations as an example of a contingency that is disregarded until it occurs. In addition, although not addressed in the regulations, it should be noted that a mere change in the type (as opposed to the amount) of benefit being paid in a series of payments is not relevant in determining whether the payments are substantially equal and are being paid for a period described in section 402(c)(4)(A). Thus, if a distributee receives a series of disability benefits followed by a series of retirement benefits, and the two benefits are reasonably expected to be substantially equal, the retirement benefits may be combined with the disability benefits in determining whether a series of payments are substantially equal and are for a period described in section 402(c)(4)(A).

In response to comments, the final regulations also clarify that a mere change in distributee upon the death of an employee is not a modification that requires a redetermination of whether the remaining payments under the annuity are substantially equal periodic payments over a period described in section 402(c)(4)(A) and, thus, excluded from the definition of eligible rollover distribution.

d. Coordination With Social Security Benefits

The final regulations expand the scope of the rule in the temporary regulations permitting social security benefits to be taken into account in determining whether a series of periodic payments are substantially equal. Under the final regulations, if the amount paid annually from the plan is reduced upon attainment of social security retirement age (or commencement of social security benefits), the payments after the reduction will be treated as substantially equal to the payments prior to the reduction, even if the reduction is not equal to the distributee's annual social security benefits, provided that the reduction does not exceed the annual social security benefits and the post-reduction payments are substantially equal.

e. Supplements and Adjustments to Annuity Payments

The final regulations retain the rule that a payment will be treated as independent, and thus as not part of a series of substantially equal periodic payments, if the payment is substantially larger or smaller than the other payments in the series. However, in response to comments, the final regulations clarify that adjustments to the amount of annuity payments that result solely from correction of reasonable administrative error or delay in payment will not cause any payment in a series of payments that are otherwise substantially equal to fail to be treated as a payment in the series.

Further, in response to comments concerning the payment of ''13th checks'' and other supplemental annuity payments, the regulations provide an additional rule for defined benefit plans. If a defined benefit plan provides a benefit increase for annuitants (e.g., retirees or beneficiaries) that supplements a series of substantially equal annuity payments in a consistent manner for all similarly situated annuitants, the benefit increase will not constitute an independent payment (and will not cause the series of payments to be treated as not substantially equal), if the payment either is not more than 10 percent of the annual rate of payment or is not more than $750.

f. Required Minimum Distributions

As noted above, the final regulations incorporate the guidance in Notice 93–3 concerning the determination of the required minimum distribution for purposes of section 402(c). Also, in response to questions concerning the allocation of basis in the case of a required minimum distribution, the final regulations clarify that if part (but not all) of a payment is required under section 401(a)(9) and if part (but not all) of the same payment represents return of basis, the plan must first allocate the return of basis toward satisfaction of the section 401(a)(9) required minimum distribution. This rule has the effect of maximizing the amount that is eligible to be rolled over.

g. Corrective Distributions and Deemed Distributions

The final regulations retain the rule that certain corrective distributions and deemed distributions are excluded from the definition of an eligible rollover distribution. The regulations also clarify that, to the extent corrective distributions are properly made from a section 403(b) annuity, they are not eligible rollover distributions.

With respect to deemed distributions under section 72(p), the final regulations include the clarifications provided in Notice 93–3 with respect to the distinction between plan loan offset amounts and deemed distributions under section 72(p), except for the portion of Example 6 from Notice 93–3 that addressed issues relating to the tax treatment of a distribution that occurs after a deemed distribution. This portion of the example generated numerous questions and comments concerning the proper interpretation of section 72(p). Those questions and comments are best addressed in the context of guidance under section 72(p) rather than section 402(c). No inference should be drawn from the deletion of a portion of the example.

h. $5,000 Death Benefit Exclusions

The final regulations clarify that, to the extent that a death benefit is a distribution from a qualified plan, the portion of the distribution that is excluded from gross income under section 101(b) is not an eligible rollover distribution. However, recognizing that a surviving spouse or former spouse may be entitled to more than one death benefit that might qualify for the death benefit exclusion, the final regulations permit the plan administrator of a qualified plan to assume, for purposes of section 401(a)(31) and section 3405, that any death benefit being distributed from the plan to the surviving spouse or former spouse of an employee that qualifies for the exclusion is the only benefit that so qualifies.

5. Direct Rollover Requirement

a. Procedures for Accomplishing a Direct Rollover

The final regulations under section 401(a)(31) retain the rules that permit the employer to accomplish an employee's direct rollover by any reasonable means of delivery to an eligible retirement plan, including delivery of a check to the eligible retirement plan by the employee (provided that the payee line of the

check is made out in a manner that will ensure that the check is negotiable solely by the trustee or custodian of the recipient plan). The preamble to the temporary regulations requested comments on whether a standard notation, such as ''Direct Rollover,'' should be required to appear on the face of any check provided to an employee for delivery. The comments received were divided, and the final regulations do not require any standard notation.

b. Procedures That Substantially Impair the Availability of Direct Rollover

The temporary regulations provide that it would not be reasonable, and thus would not satisfy section 401(a)(31), for a plan administrator to require information or documentation or to establish procedures that ''effectively eliminate'' the right to take a direct rollover. The final regulations broaden this language to include procedures that ''substantially impair'' the right to take a direct rollover, and provide additional examples illustrating violations of section 401(a)(31).

c. Qualification Protection for Recipient Plans

The temporary regulations do not address qualification protection for qualified plans accepting rollovers. Comments were received asking for criteria that, if satisfied, would permit a receiving plan to assume that the plan from which it is accepting a rollover is qualified. To encourage plans to accept rollovers, these final regulations provide a safe harbor for receiving plans that reasonably determine that the distributing plan is qualified. The regulations also provide an example of a reasonable determination in this respect. The example illustrates that a reasonable determination will have been made if, prior to accepting a rollover contribution, the receiving plan obtains a plan administrator's letter indicating that the distributing plan had a favorable determination letter regarding qualification. However, if the receiving plan later obtains actual knowledge that the distributing plan was not qualified at the time of the direct rollover, corrective distributions with respect to the rollover amount would be required.

In addition, the final regulations under section 3405 retain the rule that no withholding liability will be imposed on a plan administrator that reasonably relies on ''adequate information'' provided by the distributee. Commentators asked whether this ''adequate information'' protection under section 3405 could also be extended to section 401(a)(31). Specifically, they asked if the distributing plan is protected from being treated as violating section 401(a)(31) where the distributee purports to elect a direct rollover but the distribution made in accordance with the information provided by the distributee does not in fact result in a direct rollover. The IRS and Treasury do not believe any special relief is needed in this case because there is no violation of section 401(a)(31) if the plan follows the distributee's directions after providing a direct rollover option.

d. Direct Rollovers to Qualified Defined Benefit Plans

The definition of eligible retirement plan under section 402(c) includes all qualified trusts (defined contribution plans and defined benefit plans) as well as qualified annuity plans under section 403(a) and individual retirement plans. For purposes of section 401(a)(31), section 401(a)(31)(D) provides that the only qualified trusts that are treated as eligible retirement plans are defined contribution plans. Commentators asked whether a plan may permit direct rollovers to qualified defined benefit plans. The final regulations clarify that the limitation in section 401(a)(31)(D) applies only for purposes of determining the scope of the requirement under section 401(a)(31), while the definition of eligible retirement plan in section 402(c)(8)(B) controls the types of plans to which direct rollovers are permitted. Thus, under section 401(a)(31), a plan is required to offer a direct rollover to any defined contribution plan, and is permitted (but not required) to offer a direct rollover to a qualified trust that is a defined benefit plan. In addition, the final regulations clarify that an eligible rollover distribution that is paid in a direct rollover to a defined benefit plan is not subject to withholding.

e. Default Procedures

The final regulations retain the rules permitting a plan administrator to establish a procedure for a participant who fails to make any election. However, the regulations clarify that if a default procedure is implemented, the distributee must receive an explanation of the procedure in conjunction with the section 402(f) notice.

f. Valuation of Distributed Property

Some commentators raised concerns about the valuation of property in order to determine the portion of the distribution eligible for direct rollover or subject to withholding. The IRS and Treasury recognize the difficulties in satisfying the rollover, withholding, and reporting requirements where property is involved and invite comments regarding these issues, including suggested approaches for addressing the valuation and taxation of property distributed by qualified plans. While these regulations include no changes with respect to these issues, they continue to permit use of the rules provided in Q&A F–1 and Q&A F–3 of § 35.3405–1 for purposes of withholding.

g. Plan Amendments

The final regulations retain the rule that, although plans must comply in operation with section 401(a)(31) beginning January 1, 1993, plans need not be amended to comply with section 401(a)(31) until the end of the remedial amendment period for amending the plan to comply with the amendments to section 401(a) made by the Tax Reform Act of 1986 (TRA '86). Notice 92–36 (1992–2 C.B. 364), specifies the remedial amendment period for most employers. Announcement 95–48 (1995–23 IRB 11), dated June 5, 1995, extends this period for plans maintained by tax exempt organizations and governments.

Plans may continue to use the model amendment published in Rev. Proc. 93–12 (1993–1 C.B. 479), to comply in form with section 401(a)(31) and these final regulations. For plans that have received favorable determination letters, see the relevant guidance for the timing of plan amendments, e.g., section 21.04 of Rev. Proc. 95–6 (1995–1 I.R.B. 166).

6. Other Rollover Rules

a. Rollover Elections Are Irrevocable

The final regulations incorporate the rule in § 1.402(a)(5)–1T that, in order for a contribution of an eligible rollover distribution to an individual retirement plan to qualify for exclusion from gross income as a rollover contribution, the participant must irrevocably elect to treat the contribution as a rollover contribution at the time the contribution is made to the individual retirement plan. A direct rollover election is deemed to be such an irrevocable election.

b. 60-Day Rule

The final regulations clarify that the 60-day period for a distributee to roll over a distribution commences on the date of that distribution regardless of the number of distributions during the taxable year. Because section 402, as amended by UCA, no longer requires that the distribution constitute a specified portion of the balance to the credit of the employee in order to be eligible for rollover, there is no longer

any need for the prior administrative rule under which the 60-day period began as of the date of the last distribution during the taxable year.

c. Rollover From Plan Not Counted in One-Year-Look-Back Rule

The final regulations clarify that a rollover (whether or not it is a direct rollover) from a qualified plan is not treated as a rollover contribution for purposes of the one-year-look-back rule in section 408(d)(3)(B).

7. 20-Percent Mandatory Withholding

a. Additional Withholding

In response to comments, the regulations clarify that a plan administrator or payor may (but is not required to) permit a distributee to elect to have more than 20 percent withheld from an eligible rollover distribution.

b. Limitation of Withholding to Cash and Property Distributed

Section 3405(e)(8) limits the maximum amount that may be withheld on any designated distribution to the sum of the amount of money and the fair market value of property (other than employer securities) that is received in the distribution. Commentators asked whether 20-percent withholding applies if the portion of the distribution that is a designated distribution is allocated to employer stock and paid to the employee, while the portion of the distribution that is the return of basis is allocated to cash. The final regulations clarify that the section 3405(e)(8) provision limiting withholding to the sum of cash and property (other than employer securities) applies to the total distribution (including, for example, return of basis) and not just to the designated distribution.

Effective Date

These final regulations apply to distributions made on or after October 19, 1995. The text of these regulations replaces the temporary regulations published in the Federal Register on October 22, 1992. Although they will be removed from the Code of Federal Regulations (CFR), the temporary regulations, as they appear in the April 1, 1995 edition of 26 CFR part 1, retain their effectiveness with respect to distributions made on or after January 1, 1993, but before October 19, 1995. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, plans may comply with the provisions of UCA by substituting all or part of the provisions of these final regulations for the corresponding provisions of the temporary regulations, if any.

In addition, no penalties or sanctions will apply for failure to satisfy section 401(a)(31) or section 402(f), or for failure to withhold in accordance with section 3405(c), if the requirements of UCA are satisfied with respect to a distribution, made on or after October 19, 1995 but before January 1, 1996, by substituting all or part of the provisions of the temporary regulations for the corresponding provisions of these final regulations. For any distribution made on or after October 19, 1995 but before January 1, 1996, a distributee may roll over the distribution if it qualifies as an eligible rollover distribution if all or part of the provisions of the temporary regulations are substituted for the corresponding provisions of these final regulations. Moreover, during this period, the plan administrator and the employee (or spousal distributee) need not apply the provisions in the same manner with respect to any distribution.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

§§ 1.401(a)(31)–1T, 1.402(c)–2T, 1.402(f)–2T, and 1.403(b)–2T [Removed]

Par. 2. Sections 1.401(a)(31)–1T, 1.402(c)–2T, 1.402(f)–2T, and 1.403(b)–2T are removed.

Par. 3. Sections 1.401(a)(31)–1, 1.402(c)–2, and 1.403(b)–2 are added and § 1.402(f)–1 is revised to read as follows:

§ 1.401(a)(31)–1 Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

The following questions and answers relate to the qualification requirement imposed by section 401(a)(31) of the Internal Revenue Code of 1986, pertaining to the direct rollover option for eligible rollover distributions from pension, profit-sharing, and stock bonus plans. Section 401(a)(31) was added by section 522(a) of the Unemployment Compensation Amendments of 1992, Public Law 102–318, 106 Stat. 290 (UCA). For additional UCA guidance under sections 402(c), 402(f), 403(b)(8) and (10), and 3405(c), see §§ 1.402(c)–2, 1.402(f)–1, and 1.403(b)–2, and § 31.3405(c)–1 of this chapter, respectively.

List of Questions

make a direct rollover within a certain time period?

Q–8: May the plan administrator establish a deadline after which the distributee may not revoke an election to make or not make a direct rollover?

Q–9: Must the plan administrator permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

Q–10: Must the plan administrator allow a distributee to divide an eligible rollover distribution into two or more separate distributions to be paid in direct rollovers to two or more eligible retirement plans?

Q–11: Will a plan satisfy section 401(a)(31) if the plan administrator does not permit a distributee to elect a direct rollover if his or her eligible rollover distributions during a year are reasonably expected to total less than $200?

Q–12: Is a plan administrator permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series?

Q–13: Is the eligible retirement plan designated by a distributee to receive a direct rollover distribution required to accept the distribution?

Q–14: For purposes of applying the plan qualification requirements of section 401(a), is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover a distribution and rollover or is it a transfer of assets and liabilities?

Q–15: Must a direct rollover option be provided for an eligible rollover distribution that is in the form of a plan loan offset amount?

Q–16: Must a direct rollover option be provided for an eligible rollover distribution from a qualified plan distributed annuity contract?

Q–17: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution?

Q–18: When must a qualified plan be amended to comply with section 401(a)(31)?

Questions and Answers

Q–1: What are the direct rollover requirements under section 401(a)(31)?

A–1: (a) *General rule.* To satisfy section 401(a)(31), added by UCA, a plan must provide that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan, and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover described in Q&A–3 of this section. Thus, the plan must give the distributee the option of having his or her distribution paid in a direct rollover to an eligible retirement plan specified by the distributee. For purposes of section 401(a)(31) and this section, eligible rollover distribution has the meaning set forth in section 402(c)(4) and § 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14, except as otherwise provided in Q&A–2 of this section, eligible retirement plan has the meaning set forth in section 402(c)(8)(B) and § 1.402(c)–2, Q&A–2.

(b) *Related Internal Revenue Code provisions*—(1) *Mandatory withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to 20-percent income tax withholding under section 3405(c). See § 31.3405(c)–1 of this chapter for guidance concerning the withholding requirements applicable to eligible rollover distributions.

(2) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable period of time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See § 1.402(f)–1 for guidance concerning the written explanation required under section 402(f).

(3) *Section 403(b) annuities.* Section 403(b)(10) provides that requirements similar to those imposed by section 401(a)(31) apply to annuities described in section 403(b). See § 1.403(b)–2 for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(c) *Effective date*—(1) *Statutory effective date.* Section 401(a)(31) applies to eligible rollover distributions made on or after January 1, 1993.

(2) *Regulatory effective date.* This section applies to eligible rollover distributions made on or after October 19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 1.401(a)(31)–1T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, a plan may satisfy section 401(a)(31) by substituting any or all provisions of this section for the corresponding provisions of § 1.401(a)(31)–1T, if any.

Q–2: Does section 401(a)(31) require that a qualified plan permit a direct rollover to be made to a qualified trust that is not part of a defined contribution plan?

A–2: No. Section 401(a)(31)(D) limits the types of qualified trusts that are treated as eligible retirement plans to defined contribution plans that accept eligible rollover distributions. Therefore, although a plan is permitted, at a participant's election, to make a direct rollover to any type of eligible retirement plan, as defined in section 402(c)(8)(B) (including a defined benefit plan), a plan will not fail to satisfy section 401(a)(31) solely because the plan will not permit a direct rollover to a qualified trust that is part of a defined benefit plan. In contrast, if a distributee elects a direct rollover of an eligible rollover distribution to an annuity plan described in section 403(a), that distribution must be paid to the annuity plan, even if the recipient annuity plan is a defined benefit plan.

Q–3: What is a direct rollover that satisfies section 401(a)(31), and how is it accomplished?

A–3: A direct rollover that satisfies section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. Reasonable means of direct payment include, for example, a wire transfer or the mailing of a check to the eligible retirement plan. If payment is made by check, the check must be negotiable only by the trustee of the eligible retirement plan. If the payment is made by wire transfer, the wire transfer must be directed only to the trustee of the eligible retirement plan. In the case of an eligible retirement plan that does not have a trustee (such as a custodial individual retirement account or an individual retirement annuity), the custodian of the plan or issuer of the contract under the plan, as appropriate, should be substituted for the trustee for purposes of this Q&A–3, and Q&A–4 of this section.

Q–4: Is providing a distributee with a check for delivery to an eligible retirement plan a reasonable means of accomplishing a direct rollover?

A–4: Providing the distributee with a check and instructing the distributee to deliver the check to the eligible retirement plan is a reasonable means of direct payment, provided that the check is made payable as follows: [Name of the trustee] as trustee of [name of the eligible retirement plan]. For example, if the name of the eligible retirement plan is ''Individual Retirement Account of John Q. Smith,'' and the name of the trustee is ''ABC Bank,'' the payee line of a check would read ''ABC Bank as trustee of Individual Retirement

Account of John Q. Smith.'' Unless the name of the distributee is included in the name of the eligible retirement plan, the check also must indicate that it is for the benefit of the distributee. If the eligible retirement plan is not an individual retirement account or an individual retirement annuity, the payee line of the check need not identify the trustee by name. For example, the payee line of a check for the benefit of distributee Jane Doe might read, ''Trustee of XYZ Corporation Savings Plan FBO Jane Doe.''

Q–5: Is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover currently includible in gross income or subject to 20-percent withholding?

A–5: No. An eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is not currently includible in the distributee's gross income under section 402(c) and is exempt from the 20-percent withholding imposed under section 3405(c)(2). However, when any portion of the eligible rollover distribution is subsequently distributed from the eligible retirement plan, that portion will be includible in gross income to the extent required under section 402, 403, or 408.

Q–6: What procedures may a plan administrator prescribe for electing a direct rollover, and what information may the plan administrator require a distributee to provide when electing a direct rollover?

A–6: (a) *Permissible procedures.* Except as otherwise provided in paragraph (b) of this Q&A–6, the plan administrator may prescribe any procedure for a distributee to elect a direct rollover under section 401(a)(31), provided that the procedure is reasonable. The procedure may include any reasonable requirement for information or documentation from the distributee in addition to the items of adequate information specified in § 31.3405(c)–1(b), Q&A–7 of this chapter. For example, it would be reasonable for the plan administrator to require that the distributee provide a statement from the designated recipient plan that the plan will accept the direct rollover for the benefit of the distributee and that the recipient plan is, or is intended to be, an individual retirement account, an individual retirement annuity, a qualified annuity plan described in section 403(a), or a qualified trust described in section 401(a), as applicable. In the case of a designated recipient plan that is a qualified trust, it also would be reasonable for the plan administrator to require a statement that the qualified trust is not excepted from the definition of an eligible retirement plan by section 401(a)(31)(D) (i.e., is not a defined benefit plan).

(b) *Impermissible procedures.* A plan will fail to satisfy section 401(a)(31) if the plan administrator prescribes any unreasonable procedure, or requires information or documentation, that effectively eliminates or substantially impairs the distributee's ability to elect a direct rollover. For example, it would effectively eliminate or substantially impair the distributee's ability to elect a direct rollover if the recipient plan required the distributee to obtain an opinion of counsel stating that the eligible retirement plan receiving the rollover is a qualified plan or individual retirement account. Similarly, it would effectively eliminate or substantially impair the distributee's ability to elect a direct rollover if the distributing plan required a letter from the recipient eligible retirement plan stating that, upon request by the distributing plan, the recipient plan will automatically return any direct rollover amount that the distributing plan advises the recipient plan was paid incorrectly. It would also effectively eliminate or substantially impair the distributee's ability to elect a direct rollover if the distributing plan required, as a condition for making a direct rollover, a letter from the recipient eligible retirement plan indemnifying the distributing plan for any liability arising from the distribution.

Q–7: May the plan administrator treat a distributee as having made an election under a default procedure where the distributee does not affirmatively elect to make or not make a direct rollover within a certain time period?

A–7: Yes, the plan administrator may establish a default procedure whereby any distributee who fails to make an affirmative election is treated as having either made or not made a direct rollover election. However, the plan administrator may not make a distribution under any default procedure unless the distributee has received an explanation of the default procedure and an explanation of the direct rollover option as required under section 402(f) and § 1.402(f)–1, Q&A–1 and unless the timing requirements described in § 1.402(f)–1, Q&A–2 and Q&A–3 have been satisfied with respect to the explanations of both the default procedure and the direct rollover option.

Q–8: May the plan administrator establish a deadline after which the distributee may not revoke an election to make or not make a direct rollover?

A–8: Yes, but the plan administrator is not permitted to prescribe any deadline or time period with respect to revocation of a direct rollover election that is more restrictive for the distributee than that which otherwise applies under the plan to revocation of the form of distribution elected by the distributee.

Q–9: Must the plan administrator permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

A–9: Yes, the plan administrator must permit a distributee to elect to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder paid to the distributee. However, the plan administrator is permitted to require that, if the distributee elects to have only a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover, that portion be equal to at least a specified minimum amount, provided the specified minimum amount is less than or equal to $500 or any greater amount as prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter. If the entire amount of the eligible rollover distribution is less than or equal to the specified minimum amount, the plan administrator need not allow the distributee to divide the distribution.

Q–10: Must the plan administrator allow a distributee to divide an eligible rollover distribution into two or more separate distributions to be paid in direct rollovers to two or more eligible retirement plans?

A–10: No. The plan administrator is not required (but is permitted) to allow the distributee to divide an eligible rollover distribution into separate distributions to be paid to two or more eligible retirement plans in direct rollovers. Thus, the plan administrator may require that the distributee select a single eligible retirement plan to which the eligible rollover distribution (or portion thereof) will be distributed in a direct rollover.

Q–11: Will a plan satisfy section 401(a)(31) if the plan administrator does not permit a distributee to elect a direct rollover if his or her eligible rollover distributions during a year are reasonably expected to total less than $200?

A–11: Yes. A plan will satisfy section 401(a)(31) even though the plan

administrator does not permit any distributee to elect a direct rollover with respect to eligible rollover distributions during a year that are reasonably expected to total less than $200 or any lower minimum amount specified by the plan administrator. The rules described in § 31.3405(c)–1, Q&A–14 of this chapter (relating to whether withholding under section 3405(c) is required for an eligible rollover distribution that is less than $200) also apply for purposes of determining whether a direct rollover election under section 401(a)(31) must be provided for an eligible rollover distribution that is less than $200 or the lower specified amount.

Q–12: Is a plan administrator permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series?

A–12: (a) Yes. A plan administrator is permitted to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applying to all subsequent payments in the series, provided that:

(1) The employee is permitted at any time to change, with respect to subsequent payments, a previous election to make or not make a direct rollover; and

(2) The written explanation provided under section 402(f) explains that the election to make or not make a direct rollover will apply to all future payments unless the employee subsequently changes the election.

(b) See § 1.402(f)–1, Q&A–3 for further guidance concerning the rules for providing section 402(f) notices when eligible rollover distributions are made in a series of periodic payments.

Q–13: Is the eligible retirement plan designated by a distributee to receive a direct rollover distribution required to accept the distribution?

A–13: (a) *General rule.* No. Although section 401(a)(31) requires qualified plans to provide distributees the option to make a direct rollover of their eligible rollover distributions to an eligible retirement plan, it imposes no requirement that any eligible retirement plan accept rollovers. Thus, a plan can refuse to accept rollovers. Alternatively, a plan can limit the circumstances under which it will accept rollovers. For example, a plan can limit the types of plans from which it will accept a rollover or limit the types of assets it will accept in a rollover (such as accepting only cash or its equivalent).

(b) *Qualification of receiving plan.* A plan that accepts a direct rollover from another plan will not fail to satisfy section 401(a) merely because the plan making the distribution is, in fact, not qualified under section 401(a) or section 403(a) at the time of the distribution, if, prior to accepting the rollover, the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a) or section 403(a). For example, the receiving plan may reasonably conclude that the distributing plan was qualified under section 401(a) or section 403(a) if, prior to accepting the rollover, the plan administrator of the distributing plan provided the receiving plan with a statement that the distributing plan had received a determination letter from the Commissioner indicating that the plan was qualified.

Q–14: For purposes of applying the plan qualification requirements of section 401(a), is an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover a distribution and rollover or is it a transfer of assets and liabilities?

A–14: For purposes of applying the plan qualification requirements of section 401(a), a direct rollover is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. For example, if the consent requirements under section 411(a)(11) or sections 401(a)(11) and 417(a)(2) apply to the distribution, they must be satisfied before the eligible rollover distribution may be distributed in a direct rollover. Similarly, the direct rollover is not a transfer of assets and liabilities that must satisfy the requirements of section 414(l). Finally, a direct rollover is not a transfer of benefits for purposes of applying the requirements under section 411(d)(6), as described in § 1.411(d)–4, Q&A–3. Therefore, for example, the eligible retirement plan is not required to provide, with respect to amounts paid to it in a direct rollover, the same optional forms of benefits that were provided under the plan that made the direct rollover. The direct rollover requirements of section 401(a)(31) do not affect the ability of a qualified plan to make an elective or nonelective transfer of assets and liabilities to another qualified plan in accordance with applicable law (such as section 414(l)).

Q–15: Must a direct rollover option be provided for an eligible rollover distribution that is in the form of a plan loan offset amount?

A–15: A plan will not fail to satisfy section 401(a)(31) merely because the plan does not permit a distributee to elect a direct rollover of an eligible rollover distribution in the form of a plan loan offset amount. Section 1.402(c)–2(b), Q&A–9 defines a plan loan offset amount, in general, as a distribution that occurs when, under the terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan. A plan administrator is permitted to allow a direct rollover of a participant note for a plan loan to a qualified trust described in section 401(a) or a qualified annuity plan described in section 403(a). See § 1.402(c)–2, Q&A–9 for examples illustrating the rules for plan loan offset amounts that are set forth in this Q&A–15. See § 31.3405(c)–1, Q&A–11 of this chapter for guidance concerning special withholding rules that apply to a distribution in the form of a plan loan offset amount.

Q–16: Must a direct rollover option be provided for an eligible rollover distribution from a qualified plan distributed annuity contract?

A–16: Yes. If any amount to be distributed under a qualified plan distributed annuity contract is an eligible rollover distribution (in accordance with § 1.402(c)–2), Q&A–10 the annuity contract must satisfy section 401(a)(31) in the same manner as a qualified plan under section 401(a). Section 1.402(c)–2, Q&A–10 defines a qualified plan distributed annuity contract as an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan. In the case of a qualified plan distributed annuity contract, the payor under the contract is treated as the plan administrator. See § 31.3405(c)–1, Q&A–13 of this chapter concerning the application of mandatory 20-percent withholding requirements to distributions from a qualified plan distributed annuity contract.

Q–17: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution?

A–17: (a) *General rule.* For purposes of section 401(a)(31), a plan administrator may make the assumptions described in paragraphs (b) and (c) of this Q&A–17 in determining the amount of a distribution that is an eligible rollover distribution for which a direct rollover option must be provided. Section 31.3405(c)–1, Q&A–10 of this chapter provides assumptions for purposes of complying with section 3405(c). See § 1.402(c)–2, Q&A–15 concerning the effect of these assumptions for purposes of section 402(c).

(b) *$5,000 death benefit.* A plan administrator is permitted to assume that a distribution from the plan that

qualifies for the $5,000 death benefit exclusion under section 101(b) is the only death benefit being paid with respect to a deceased employee that qualifies for that exclusion. Thus, to the extent that such a distribution would be excludible from gross income based on this assumption, the plan administrator is permitted to assume that it is not an eligible rollover distribution.

(c) *Determination of designated beneficiary.* For the purpose of determining the amount of the minimum distribution required to satisfy section 401(a)(9)(A) for any calendar year, the plan administrator is permitted to assume that there is no designated beneficiary.

Q–18: When must a qualified plan be amended to comply with section 401(a)(31)?

A–18: Even though section 401(a)(31) applies to distributions from qualified plans made on or after January 1, 1993, a qualified plan is not required to be amended before the last day by which amendments must be made to comply with the Tax Reform Act of 1986 and related provisions, as permitted in other administrative guidance of general applicability, provided that:

(a) In the interim period between January 1, 1993, and the date on which the plan is amended, the plan is operated in accordance with the requirements of section 401(a)(31); and

(b) The amendment applies retroactively to January 1, 1993.

§ 1.402(c)–2 Eligible rollover distributions; questions and answers.

The following questions and answers relate to the rollover rules under section 402(c) of the Internal Revenue Code of 1986, as added by sections 521 and 522 of the Unemployment Compensation Amendments of 1992, Public Law 102–318, 106 Stat. 290 (UCA). For additional UCA guidance under sections 401(a)(31), 402(f), 403(b)(8) and (10), and 3405(c), see §§ 1.401(a)(31)–1, 1.402(f)–1, and 1.403(b)–2, and § 31.3405(c)–1 of this chapter, respectively.

List of Questions

Questions and Answers

Q–1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan?

A–1: (a) *General rule.* Under section 402(c), as added by UCA, any portion of a distribution from a qualified plan that is an eligible rollover distribution described in section 402(c)(4) may be rolled over to an eligible retirement plan described in section 402(c)(8)(B). For purposes of section 402(c) and this section, a rollover is either a direct rollover as described in § 1.401(a)(31)–1, Q&A–3 or a contribution of an eligible rollover distribution to an eligible retirement plan that satisfies the time period requirement in section 402(c)(3) and Q&A–11 of this section and the designation requirement described in Q&A–13 of this section. See Q&A–2 of this section for the definition of an eligible retirement plan and a qualified plan.

(b) *Related Internal Revenue Code provisions*—(1) *Direct rollover option.* Section 401(a)(31), added by UCA, requires qualified plans to provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1 for further guidance concerning this direct rollover option.

(2) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See § 1.402(f)–1 for guidance concerning the written explanation required under section 402(f).

(3) *Mandatory income tax withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to 20-percent income tax withholding under section 3405(c). See § 31.3405(c)–1 of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(4) *Section 403(b) annuities.* See § 1.403(b)–2 for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(c) *Effective date*—(1) *Statutory effective date.* Section 402(c), added by UCA, applies to eligible rollover distributions made on or after January 1, 1993, even if the event giving rise to the distribution occurred on or before January 1, 1993 (e.g. termination of the employee's employment with the employer maintaining the plan before January 1, 1993), and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

(2) *Regulatory effective date.* This section applies to any distribution made on or after October 19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 1.402(c)–2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, any

or all of the provisions of this section may be substituted for the corresponding provisions of § 1.402(c)–2T, if any.

Q–2: What is an *eligible retirement plan* and a *qualified plan*?

A–2: An eligible retirement plan, under section 402(c)(8)(B), means a qualified plan or an individual retirement plan. For purposes of section 402(c) and this section, a qualified plan is an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a). An individual retirement plan is an individual retirement account described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b).

Q–3: What is an *eligible rollover distribution*?

A–3: (a) *General rule.* Unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee described in Q&A–12(a) of this section) of all or any portion of the balance to the credit of the employee in a qualified plan. Thus, except as specifically provided in Q&A–4(b) of this section, any amount distributed to an employee (or such a spousal distributee) from a qualified plan is an eligible rollover distribution, regardless of whether it is a distribution of a benefit that is protected under section 411(d)(6).

(b) *Exceptions.* An eligible rollover distribution does not include the following:

(1) Any distribution that is one of a series of substantially equal periodic payments made (not less frequently than annually) over any one of the following periods—

(i) The life of the employee (or the joint lives of the employee and the employee's designated beneficiary);

(ii) The life expectancy of the employee (or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary); or

(iii) A specified period of ten years or more;

(2) Any distribution to the extent the distribution is a required minimum distribution under section 401(a)(9); or

(3) The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation described in section 402(e)(4)). Thus, for example, an eligible rollover distribution does not include the portion of any distribution that is excludible from gross income under section 72 as a return of the employee's investment in the contract (e.g., a return of the employee's after-tax contributions), but does include net unrealized appreciation.

Q–4: Are there other amounts that are not eligible rollover distributions?

A–4: Yes. The following amounts are not eligible rollover distributions:

(a) Elective deferrals, as defined in section 402(g)(3), that, pursuant to § 1.415–6(b)(6)(iv), are returned as a result of the application of the section 415 limitations, together with the income allocable to these corrective distributions.

(b) Corrective distributions of excess deferrals as described in § 1.402(g)–1(e)(3), together with the income allocable to these corrective distributions.

(c) Corrective distributions of excess contributions under a qualified cash or deferred arrangement described in § 1.401(k)–1(f)(4) and excess aggregate contributions described in § 1.401(m)–1(e)(3), together with the income allocable to these distributions.

(d) Loans that are treated as deemed distributions pursuant to section 72(p).

(e) Dividends paid on employer securities as described in section 404(k).

(f) The costs of life insurance coverage (P.S. 58 costs).

(g) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Q–5: For purposes of determining whether a distribution is an eligible rollover distribution, how is it determined whether a series of payments is a series of substantially equal periodic payments over a period specified in section 402(c)(4)(A)?

A–5: (a) *General rule.* Generally, whether a series of payments is a series of substantially equal periodic payments over a specified period is determined at the time payments begin, and by following the principles of section 72(t)(2)(A)(iv), without regard to contingencies or modifications that have not yet occurred. Thus, for example, a joint and 50-percent survivor annuity will be treated as a series of substantially equal payments at the time payments commence, as will a joint and survivor annuity that provides for increased payments to the employee if the employee's beneficiary dies before the employee. Similarly, for purposes of determining if a disability benefit payment is part of a series of substantially equal payments for a period described in section 402(c)(4)(A), any contingency under which payments cease upon recovery from the disability may be disregarded.

(b) *Certain supplements disregarded.* For purposes of determining whether a distribution is one of a series of payments that are substantially equal, social security supplements described in section 411(a)(9) are disregarded. For example, if a distributee receives a life annuity of $500 per month, plus a social security supplement consisting of payments of $200 per month until the distributee reaches the age at which social security benefits of not less than $200 a month begin, the $200 supplemental payments are disregarded and, therefore, each monthly payment of $700 made before the social security age and each monthly payment of $500 made after the social security age is treated as one of a series of substantially equal periodic payments for life. A series of payments that are not substantially equal solely because the amount of each payment is reduced upon attainment of social security retirement age (or, alternatively, upon commencement of social security early retirement, survivor, or disability benefits) will also be treated as substantially equal as long as the reduction in the actual payments is level and does not exceed the applicable social security benefit.

(c) *Changes in the amount of payments or the distributee.* If the amount (or, if applicable, the method of calculating the amount) of the payments changes so that subsequent payments are not substantially equal to prior payments, a new determination must be made as to whether the remaining payments are a series of substantially equal periodic payments over a period specified in Q&A–3(b)(1) of this section. This determination is made without taking into account payments made or the years of payment that elapsed prior to the change. However, a new determination is not made merely because, upon the death of the employee, the spouse or former spouse of the employee becomes the distributee. Thus, once distributions commence over a period that is at least as long as either the first annuitant's life or 10 years (e.g., as provided by a life annuity with a five-year or ten-year-certain guarantee), then substantially equal payments to the survivor are not eligible rollover distributions even though the payment period remaining after the death of the employee is or may be less than the period described in section 402(c)(4)(A). For example, substantially equal periodic payments made under a life annuity with a five-year term certain would not be an eligible rollover distribution even when

paid after the death of the employee with three years remaining under the term certain.

(d) *Defined contribution plans.* The following rules apply in determining whether a series of payments from a defined contribution plan constitute substantially equal periodic payments for a period described in section 402(c)(4)(A):

(1) *Declining balance of years.* A series of payments from an account balance under a defined contribution plan will be considered substantially equal payments over a period if, for each year, the amount of the distribution is calculated by dividing the account balance by the number of years remaining in the period. For example, a series of payments will be considered substantially equal payments over 10 years if the series is determined as follows. In year 1, the annual payment is the account balance divided by 10; in year 2, the annual payment is the remaining account balance divided by 9; and so on until year 10 when the entire remaining balance is distributed.

(2) *Reasonable actuarial assumptions.* If an employee's account balance under a defined contribution plan is to be distributed in annual installments of a specified amount until the account balance is exhausted, then, for purposes of determining if the period of distribution is a period described in section 402(c)(4)(A), the period of years over which the installments will be distributed must be determined using reasonable actuarial assumptions. For example, if an employee has an account balance of $100,000, elects distributions of $12,000 per year until the account balance is exhausted, and the future rate of return is assumed to be 8% per year, the account balance will be exhausted in approximately 14 years. Similarly, if the same employee elects a fixed annual distribution amount and the fixed annual amount is less than or equal to $10,000, it is reasonable to assume that a future rate of return will be greater than 0% and, thus, the account will not be exhausted in less than 10 years.

(e) *Series of payments beginning before January 1, 1993.* Except as provided in paragraph (c) of this Q&A, if a series of periodic payments began before January 1, 1993, the determination of whether the post-December 31, 1992 payments are a series of substantially equal periodic payments over a specified period is made by taking into account all payments made, including payments made before January 1, 1993. For example, if a series of substantially equal periodic payments beginning on January 1, 1983, is scheduled to be paid over a period of 15 years, payments in the series that are made after December 31, 1992, will not be eligible rollover distributions even though they will continue for only five years after December 31, 1992, because the pre-January 1, 1993 payments are taken into account in determining the specified period.

Q–6: What types of variations in the amount of a payment cause the payment to be independent of a series of substantially equal periodic payments and thus not part of the series?

A–6: (a) *Independent payments.* Except as provided in paragraph (b) of this Q&A, a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series, if the payment is substantially larger or smaller than the other payments in the series. An independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution. This is the case regardless of whether the payment is made before, with, or after payments in the series. For example, if an employee elects a single payment of half of the account balance with the remainder of the account balance paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted. Similarly, if an employee's surviving spouse receives a survivor life annuity of $1,000 per month plus a single payment on account of death of $7,500, the single payment is treated as independent of the payments in the annuity and is an eligible rollover distribution unless otherwise excepted (e.g., $5,000 of the $7,500 might qualify to be excluded from gross income as a death benefit under section 101(b)).

(b) *Special rules*—(1) *Administrative error or delay.* If, due solely to reasonable administrative error or delay in payment, there is an adjustment after the annuity starting date to the amount of any payment in a series of payments that otherwise would constitute a series of substantially equal payments described in section 402(c)(4)(A) and this section, the adjusted payment or payments will be treated as part of the series of substantially equal periodic payments and will not be treated as independent of the payments in the series. For example, if, due solely to reasonable administrative delay, the first payment of a life annuity is delayed by two months and reflects an additional two months worth of benefits, that payment will be treated as a substantially equal payment in the series rather than as an independent payment. The result will not change merely because the amount of the adjustment is paid in a separate supplemental payment.

(2) *Supplemental payments for annuitants.* A supplemental payment from a defined benefit plan to annuitants (e.g., retirees or beneficiaries) will be treated as part of a series of substantially equal payments, rather than as an independent payment, provided that the following conditions are met—

(i) The supplement is a benefit increase for annuitants;

(ii) The amount of the supplement is determined in a consistent manner for all similarly situated annuitants;

(iii) The supplement is paid to annuitants who are otherwise receiving payments that would constitute substantially equal periodic payments; and

(iv) The aggregate supplement is less than or equal to the greater of 10% of the annual rate of payment for the annuity, or $750 or any higher amount prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Federal Register. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(3) *Final payment in a series.* If a payment in a series of payments from an account balance under a defined contribution plan represents the remaining balance to the credit and is substantially less than the other payments in the series, the final payment must nevertheless be treated as a payment in the series of substantially equal payments and may not be treated as an independent payment if the other payments in the series are substantially equal and the payments are for a period described in section 402(c)(4)(A) based on the rules provided in paragraph (d)(2) of Q&A–5 of this section. Thus, such final payment will not be an eligible rollover distribution.

Q–7: When is a distribution from a plan a required minimum distribution under section 401(a)(9)?

A–7: (a) *General rule.* Except as provided in paragraphs (b) and (c) of this Q&A, if a minimum distribution is required for a calendar year, the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9), to the extent that the total required minimum distribution under section 401(a)(9) for the calendar year has not been satisfied. Accordingly, these amounts are not eligible rollover distributions. For example, if an employee is required under section

401(a)(9) to receive a required minimum distribution for a calendar year of $5,000 and the employee receives a total of $7,200 in that year, the first $5,000 distributed will be treated as the required minimum distribution and will not be an eligible rollover distribution and the remaining $2,200 will be an eligible rollover distribution if it otherwise qualifies. If the total section 401(a)(9) required minimum distribution for a calendar year is not distributed in that calendar year (e.g., when the distribution for the calendar year in which the employee reaches age 70½ is made on the following April 1), the amount that was required but not distributed is added to the amount required to be distributed for the next calendar year in determining the portion of any distribution in the next calendar year that is a required minimum distribution.

(b) *Distribution before age 70½.* Any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70½ will not be treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

(c) *Special rule for annuities.* In the case of annuity payments from a defined benefit plan, or under an annuity contract purchased from an insurance company (including a qualified plan distributed annuity contract (as defined in Q&A–10 of this section)), the entire amount of any such annuity payment made on or after January 1 of the year in which an employee attains (or would have attained) age 70½ will be treated as an amount required under section 401(a)(9) and, thus, will not be an eligible rollover distribution.

Q–8: How are amounts that are not includible in gross income allocated for purposes of determining the required minimum distribution?

A–8: If section 401(a)(9) has not yet been satisfied by the plan for the year with respect to an employee, a distribution is made to the employee that exceeds the amount required to satisfy section 401(a)(9) for the year for the employee, and a portion of that distribution is excludible from gross income, the following rule applies for purposes of determining the amount of the distribution that is an eligible rollover distribution. The portion of the distribution that is excludible from gross income is first allocated toward satisfaction of section 401(a)(9) and then the remaining portion of the required minimum distribution, if any, is satisfied from the portion of the distribution that is includible in gross income. For example, assume an employee is required under section 401(a)(9) to receive a minimum distribution for a calendar year of $4,000 and the employee receives a $4,800 distribution, of which $1,000 is excludible from income as a return of basis. First, the $1,000 return of basis is allocated toward satisfying the required minimum distribution. Then, the remaining $3,000 of the required minimum distribution is satisfied from the $3,800 of the distribution that is includible in gross income, so that the remaining balance of the distribution, $800, is an eligible rollover distribution if it otherwise qualifies.

Q–9: What is a distribution of a plan loan offset amount, and is it an eligible rollover distribution?

A–9: (a) *General rule.* A distribution of a plan loan offset amount, as defined in paragraph (b) of this Q&A, is an eligible rollover distribution if it satisfies Q&A–3 of this section. Thus, an amount equal to the plan loan offset amount can be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period under section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason. See § 1.401(a)(31)–1, Q&A–15 for guidance concerning the offering of a direct rollover of a plan loan offset amount. See § 31.3405(c)–1, Q&A–11 of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(b) *Definition of plan loan offset amount.* For purposes of section 402(c), a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in a participant's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, e.g., where the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (e.g., where the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(c) *Examples.* The rules with respect to a plan loan offset amount in this Q&A–9, § 1.401(a)(31)–1, Q&A–15 and § 31.3405(c)–1, Q&A–11 of this chapter are illustrated by the following examples:

Example 1. (a) In 1996, Employee A has an account balance of $10,000 in Plan Y, of which $3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. Plan Y does not provide any direct rollover option with respect to plan loans. Upon termination of employment in 1996, Employee A, who is under age 70½ , elects a distribution of Employee A's entire account balance in Plan Y, and Employee A's outstanding loan is offset against the account balance on distribution. Employee A elects a direct rollover of the distribution.

(b) In order to satisfy section 401(a)(31), Plan Y must pay $7,000 directly to the eligible retirement plan chosen by Employee A in a direct rollover. When Employee A's account balance was offset by the amount of the $3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to $3,000) that is an eligible rollover distribution. However, under § 1.401(a)(31)–1, Q&A–15 Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the $3,000 plan loan offset amount.

(c) No withholding is required under section 3405(c) on account of the distribution of the $3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding. Employee A may roll over $3,000 to an eligible retirement plan within the 60 day period provided in section 402(c)(3).

Example 2. (a) The facts are the same as in *Example 1*, except that the terms governing the plan loan to Employee A provide that, upon termination of employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A terminates employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset by the amount of the $3,000 unpaid loan balance.

(b) The $3,000 plan loan offset amount attributable to the plan loan in this example is treated in the same manner as the $3,000 plan loan offset amount in *Example 1*.

Example 3. (a) The facts are the same as in *Example 2*, except that, instead of providing for an automatic offset upon termination of employment to repay the plan loan, the terms governing the plan loan require full repayment of the loan by Employee A within 30 days of termination of employment. Employee A terminates employment, does not elect a distribution from Plan Y, and also fails to repay the plan loan within 30 days. The plan administrator of Plan Y declares the plan loan to Employee A in default and executes on the loan by offsetting Employee A's account balance by the amount of the $3,000 unpaid loan balance.

(b) The $3,000 plan loan offset amount attributable to the plan loan in this example is treated in the same manner as the $3,000 plan loan offset amount in *Example 1* and in *Example 2*. The result in this *Example 3* is the same even though the plan administrator treats the loan as in default before offsetting Employee A's accrued benefit by the amount of the unpaid loan.

Example 4. (a) The facts are the same as in *Example 1,* except that Employee A elects to receive the distribution of the account balance that remains after the $3,000 offset to repay the plan loan, instead of electing a direct rollover of the remaining account balance.

(b) In this case, the amount of the distribution received by Employee A is $10,000, not $3,000. Because the amount of the $3,000 offset attributable to the loan is included in determining the amount that equals 20 percent of the eligible rollover distribution received by Employee A, withholding in the amount of $2,000 (20 percent of $10,000) is required under section 3405(c). The $2,000 is required to be withheld from the $7,000 to be distributed to Employee A in cash, so that Employee A actually receives a check for $5,000.

Example 5. The facts are the same as in *Example* 4, except that the $7,000 distribution to Employee A after the offset to repay the loan consists solely of employer securities within the meaning of section 402(e)(4)(E). In this case, no withholding is required under section 3405(c) because the distribution consists solely of the $3,000 plan loan offset amount and the $7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities. Employee A may roll over the employer securities and $3,000 to an eligible retirement plan within the 60-day period provided in section 402(c)(3).

Example 6. Employee B, who is age 40, has an account balance in Plan Z, a profit sharing plan qualified under section 401(a) that includes a qualified cash or deferred arrangement described in section 401(k). Plan Z provides for no after-tax employee contributions. In 1990, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2), and which is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B). In 1996, the loan fails to satisfy section 72(p)(2) because Employee B stops repayment. In that year, pursuant to section 72(p), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Under Q&A–4 of this section, the deemed distribution is not an eligible rollover distribution. Because Employee B has not separated from service or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time Employee B stops repayment on the loan. Thus, there is no distribution of an offset amount that is an eligible rollover distribution in 1996.

Q–10: What is a qualified plan distributed annuity contract, and is an amount paid under such a contract a distribution of the balance to the credit of the employee in a qualified plan for purposes of section 402(c)?

A–10: (a) *Definition of a qualified plan distributed annuity contract.* A qualified plan distributed annuity contract is an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan.

(b) *Treatment of amounts paid as eligible rollover distributions.* Amounts paid under a qualified plan distributed annuity contract are payments of the balance to the credit of the employee for purposes of section 402(c) and are eligible rollover distributions, if they otherwise qualify. Thus, for example, if the employee surrenders the contract for a single sum payment of its cash surrender value, the payment would be an eligible rollover distribution to the extent it is includible in gross income and not a required minimum distribution under section 401(a)(9). This rule applies even if the annuity contract is distributed in connection with a plan termination. See § 1.401(a)(31)–1, Q&A–16 and § 31.3405(c)–1, Q&A–13 of this chapter concerning the direct rollover requirements and 20-percent withholding requirements, respectively, that apply to eligible rollover distributions from such an annuity contract.

Q–11: If an eligible rollover distribution is paid to an employee, and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan within 60 days, is the amount contributed not currently includible in gross income?

A–11: Yes, the amount contributed is not currently includible in gross income, provided that it is contributed to the eligible retirement plan no later than the 60th day following the day on which the employee received the distribution. If more than one distribution is received by an employee from a qualified plan during a taxable year, the 60-day rule applies separately to each distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee. However, if all or any portion of an amount equal to the amount withheld is not contributed as a rollover, it is included in the employee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

Q–12: How does section 402(c) apply to a distributee who is not the employee?

A–12: (a) *Spousal distributee.* If any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. The same rule applies if any distribution attributable to an employee is paid in accordance with a qualified domestic relations order (as defined in section 414(p)) to the employee's spouse or former spouse who is an alternate payee. Therefore, a distribution to the surviving spouse of an employee (or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order), including a distribution of ancillary death benefits attributable to the employee, is an eligible rollover distribution if it meets the requirements of section 402(c)(2) and (4) and Q&A–3 through Q&A–10 and Q&A–14 of this section. However, a qualified plan (as defined in Q&A–2 of this section) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

(b) *Non-spousal distributee.* A distributee other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a qualified domestic relations order) is not permitted to roll over distributions from a qualified plan. Therefore, those distributions do not constitute eligible rollover distributions under section 402(c)(4) and are not subject to the 20-percent income tax withholding under section 3405(c).

Q–13: Must an employee's (or spousal distributee's) election to treat a contribution of an eligible rollover distribution to an individual retirement plan as a rollover contribution be irrevocable?

A–13: (a) *In general.* Yes. In order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for current exclusion from gross income, a distributee must elect, at the time the contribution is made, to treat the contribution as a rollover

contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This election is irrevocable. Once any portion of an eligible rollover distribution has been contributed to an individual retirement plan and designated as a rollover distribution, taxation of the withdrawal of the contribution from the individual retirement plan is determined under section 408(d) rather than under section 402 or 403. Therefore, the eligible rollover distribution is not eligible for capital gains treatment, five-year or ten-year averaging, or the exclusion from gross income for net unrealized appreciation on employer stock.

(b) Direct rollover. If an eligible rollover distribution is paid to an individual retirement plan in a direct rollover at the election of the distributee, the distributee is deemed to have irrevocably designated that the direct rollover is a rollover contribution.

Q–14: How is the $5,000 death benefit exclusion under section 101(b) treated for purposes of determining the amount that is an eligible rollover distribution?

A–14: To the extent that a death benefit is a distribution from a qualified plan, the portion of the distribution that is excluded from gross income under section 101(b) is not an eligible rollover distribution. See § 1.401(a)(31)-1, Q&A–17 for guidance concerning assumptions that a plan administrator may make with respect to whether and to what extent a distribution of a survivor benefit is excludible from gross income under section 101(b).

Q–15: May an employee (or spousal distributee) roll over more than the plan administrator determines to be an eligible rollover distribution using an assumption described in § 1.401(a)(31)-1, Q&A–17?

A–15: Yes. The portion of any distribution that an employee (or spousal distributee) may roll over as an eligible rollover distribution under section 402(c) is determined based on the actual application of section 402 and other relevant provisions of the Internal Revenue Code. The actual application of these provisions may produce different results than any assumption described in § 1.401(a)(31)–1, Q&A–17 that is used by the plan administrator. Thus, for example, even though the plan administrator calculates the portion of a distribution that is a required minimum distribution (and thus is not made eligible for direct rollover under section 401(a)(31)), by assuming that there is no designated beneficiary, the portion of the distribution that is actually a required minimum distribution and thus not an eligible rollover distribution is determined by taking into account the designated beneficiary, if any. If, by taking into account the designated beneficiary, a greater portion of the distribution is an eligible rollover distribution, the distributee may rollover the additional amount. Similarly, even though a plan administrator assumes that a distribution from a qualified plan is the only death benefit with respect to an employee that qualifies for the $5,000 death benefit exclusion under section 101(b), to the extent that the death benefit exclusion is allocated to a different death benefit, a greater portion of the distribution may actually be includible in gross income and, thus, be an eligible rollover distribution, and the surviving spouse may roll over the additional amount if it otherwise qualifies.

Q–16: Is a rollover from a qualified plan to an individual retirement account or individual retirement annuity treated as a rollover contribution for purposes of the one-year look-back rollover limitation of section 408(d)(3)(B)?

A–16: No. A distribution from a qualified plan that is rolled over to an individual retirement account or individual retirement annuity is not treated for purposes of section 408(d)(3)(B) as an amount received by an individual from an individual retirement account or individual retirement annuity which is not includible in gross income because of the application of section 408(d)(3).

§ 1.402(f)–1 Required explanation of eligible rollover distributions; questions and answers.

The following questions and answers concern the written explanation requirement imposed by section 402(f) of the Internal Revenue Code of 1986 relating to distributions eligible for rollover treatment. Section 402(f) was amended by section 521(a) of the Unemployment Compensation Amendments of 1992, Public Law 102–318, 106 Stat. 290 (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 403(b)(8) and (10), and 3405(c), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.403(b)–2, and 31.3405(c)–1 of this chapter, respectively.

List of Questions

Questions and Answers

Q–1: What are the requirements for a written explanation under section 402(f)?

A–1: (a) *General rule.* Under section 402(f), as amended by UCA, the plan administrator of a qualified plan is required, within a reasonable period of time before making an eligible rollover distribution, to provide the distributee with the written explanation described in section 402(f) (section 402(f) notice). The section 402(f) notice must be designed to be easily understood and must explain the following: the rules under which the distributee may elect that the distribution be paid in the form of a direct rollover to an eligible retirement plan; the rules that require the withholding of tax on the distribution if it is not paid in a direct rollover; the rules under which the distributee may defer tax on the distribution if it is contributed in a rollover to an eligible retirement plan within 60 days of the distribution; and if applicable, certain special rules regarding the taxation of the distribution as described in section 402(d) (averaging with respect to lump sum distributions) and (e) (other rules including treatment of net unrealized appreciation). See § 1.401(a)(31)–1, Q&A–7 for additional information that must be provided if a plan provides a default procedure regarding the election of a direct rollover.

(b) *Model section 402(f) notice.* The plan administrator will be deemed to have complied with the requirements of paragraph (a) of this Q&A–1 relating to the contents of the section 402(f) notice if the plan administrator provides the applicable model section 402(f) notice published by the Internal Revenue Service for this purpose in a revenue ruling, notice, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(c) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance, published in the Internal Revenue Bulletin, may modify, or provide any additional guidance with respect to, the notice requirement of this section. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(d) *Effective date*—(1) *Statutory effective date.* Section 402(f) applies to eligible rollover distributions made after December 31, 1992.

(2) *Regulatory effective date.* This section applies to eligible rollover distributions made on or after October

19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 1.402(c)–2T, Q&A–11 through 15 (as it appeared in the April 1, 1995 edition of 26 CFR part 1), apply. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, a plan administrator or payor may satisfy the requirements of section 402(f) by substituting any or all provisions of this section for the corresponding provisions of § 1.402(c)–1T, Q&A–11 through 15, if any.

Q–2: When must the plan administrator provide the section 402(f) notice to a distributee?

A–2: The plan administrator must provide a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided that the following requirement is met. The plan administrator must provide information to the distributee clearly indicating that (in accordance with the first sentence of this Q&A–2) the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be provided either in the section 402(f) notice or stated in a separate document (e.g., attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of this Q&A–2, the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)–20, Q&A–10, for the date of distribution.

Q–3: Must the plan administrator provide a separate section 402(f) notice for each distribution in a series of periodic payments that are eligible rollover distributions?

A–3: No. In the case of a series of periodic payments that are eligible rollover distributions, the plan administrator is permitted to satisfy section 402(f) with respect to each payment in the series by providing the section 402(f) notice prior to the first payment in the series, in accordance with the rules in Q&A–1 and Q&A–2 of this section, and providing the notice at least once annually for as long as the payments continue. However, see § 1.401(a)(31)–1, Q&A–12 for additional guidance if the plan administrator intends to treat a distributee's election to make or not make a direct rollover with respect to one payment in a series of periodic payments as applicable to all subsequent payments in the series (absent a subsequent change of election).

Q–4: May a plan administrator post the section 402(f) notice as a means of providing it to distributees?

A–4: No. The posting of the section 402(f) notice will not be considered provision of the notice. The written notice must be provided individually to any distributee of an eligible rollover distribution within the time period described in Q&A–2 and Q&A–3 of this section.

§ 1.403(b)–2 Eligible rollover distributions; questions and answers.

The following questions and answers relate to eligible rollover distributions from annuities, custodial accounts, and retirement income accounts described in section 403(b) of the Internal Revenue Code of 1986, as amended by sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (Public Law 102–318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 3405(c), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, and § 31.3405(c)–1 of this chapter, respectively.

List of Questions

Questions and Answers

Q–1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

A–1: Under section 403(b)(8), as amended by UCA, any eligible rollover distribution from a section 403(b) annuity is permitted to be rolled over to an eligible retirement plan. For purposes of this section, a section 403(b) annuity includes an annuity contract, a custodial account, and a retirement income account described in section 403(b). For purposes of section 403(b)(8) and this section, an eligible retirement plan means another section 403(b) annuity or an individual retirement plan (as defined in § 1.402(c)(2), Q&A–2 but does not include a qualified plan (as defined in § 1.402(c)–2), Q&A–2. Except to the extent otherwise provided in this section, an eligible rollover distribution from a section 403(b) annuity is an eligible rollover distribution described in section 402(c) (2) and (4) and § 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14, except that the distribution is from section 403(b) annuity rather than a qualified plan. Thus, for example, to the extent that corrective distributions described in § 1.402(c)–2, Q&A–4 are properly made from a section 403(b) annuity, such distributions are not eligible rollover distributions. Similarly, in the case of annuity distributions from an annuity contract described in section 403(b), the entire amount of any such annuity payment made on or after January 1 of the year in which an employee attains (or would have attained) age 70½ will be treated as an amount required under section 401(a)(9) and, thus, will not be an eligible rollover distribution. The rules with respect to rollovers in sections 402 (c)(1), (c)(3), and (c)(9) and § 1.402(c)–2, Q&A–11 through Q&A–13 and Q&A–15 also apply to eligible rollover distributions from section 403(b) annuities.

Q–2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

A–2: (a) *General rule.* Yes. Pursuant to section 403(b)(10), section 403(b) does not apply to an annuity contract, custodial account, or retirement income account unless the annuity contract, custodial account, or retirement income account provides that if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in Q&A–1 of this section) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a section 403(b) annuity has satisfied this direct rollover requirement, the provisions of § 1.401(a)(31)–1 apply to the section 403(b) annuity as though it were a plan qualified under section 401(a) unless otherwise provided in this section. For example, as described in § 1.401(a)(31)–

1, Q&A–14 a direct rollover from a section 403(b) annuity to another section 403(b) annuity is a distribution and a rollover and not a transfer of funds between section 403(b) annuities and, thus, is not subject to the applicable law governing transfers of funds between section 403(b) annuities. In applying the provisions of § 1.401(a)(31)–1, the payor of the eligible rollover distribution is treated as the plan administrator.

(b) *Mandatory withholding.* As in the case of an eligible rollover distribution from a qualified plan, if a distributee of an eligible rollover distribution from a section 403(b) annuity does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20-percent income tax withholding imposed under section 3405(c). See § 31.3405(c)–1 of this chapter for provisions regarding the withholding requirements relating to eligible rollover distributions.

Q–3: Is the payor of a section 403(b) annuity required to provide the distributee of an eligible rollover distribution with an explanation of the direct rollover option?

A–3: Yes. In order to ensure that the distributee of an eligible rollover distribution from a section 403(b) annuity has a meaningful right to elect a direct rollover, the distributee must be informed of the option. Thus, within a reasonable time period before making an eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. For purposes of satisfying the reasonable time period, the qualified plan timing rule provided in § 1.402(f)–1, Q&A–2 does not apply to section 403(b) annuities. However, a payor of a section 403(b) annuity will be deemed to have provided the explanation within a reasonable time period if the payor complies with the time period in that rule.

Q–4: When do sections 403(b)(8) and (b)(10), as amended by UCA, and this § 1.403(b)–2 apply to distributions from section 403(b) annuities?

A–4: (a) *General rule*—(1) *Statutory effective date.* Section 403(b)(8), as amended by UCA, and section 403(b)(10), as amended by UCA, apply to distributions made on or after January 1, 1993. In addition, the underlying section 403(b) annuity document must be amended at the time provided in, and the section 403(b) annuity must operate in accordance with the requirements of § 1.401(a)(31)–1, Q&A–18. Section 522 of UCA provides a special effective date for governmental section 403(b) annuities. This special effective date is specified in § 1.403(b)–2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1).

(2) *Regulatory effective date.* This section applies to distributions made on or after October 19, 1995. For distributions made on or after January 1, 1993 and before October 19, 1995, § 1.403(b)–2T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for distributions made on or after January 1, 1993 but before October 19, 1995, a section 403(b) annuity may satisfy section 403(b)(10) by substituting any or all provisions of this section for the corresponding provisions of § 1.403(b)–2T, if any.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

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

Par. 5. Section 31.3402(p)–1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 31.3402(p)–1 Voluntary withholding agreements.

(a) * * * See § 31.3405(c)–1, Q&A–3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.

* * * * *

Par. 6. Section 31.3405(c)–1 is added to read as follows:

§ 31.3405(c)–1 Withholding on eligible rollover distributions; questions and answers.

The following questions and answers relate to withholding on eligible rollover distributions under section 3405(c) of the Internal Revenue Code of 1986, as added by section 522(b) of the Unemployment Compensation Amendments of 1992 (Public Law 102–318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 403(b)(8) and (10), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, and 1.403(b)–2 of this chapter, respectively.

List of Questions

Questions and Answers

Q–1: What are the withholding requirements under section 3405 for distributions from qualified plans and section 403(b) annuities?

A–1: (a) *General rule.* Section 3405(c), added by UCA, provides that any designated distribution that is an

eligible rollover distribution (as defined in section 402(f)(2)(A)) from a qualified plan or a section 403(b) annuity is subject to income tax withholding at the rate of 20 percent unless the distributee of the eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.402(c)–2, Q&A–2 of this chapter for the definition of a qualified plan and § 1.403(b)–2, Q&A–1 of this chapter for the definition of a section 403(b) annuity. For purposes of section 3405 and this section, with respect to a distribution from a qualified plan, an eligible retirement plan is a trust qualified under section 401(a), an annuity plan described in section 403(a), or an individual retirement plan (as described in § 1.402(c)–2, Q&A–2 of this chapter). For purposes of section 3405 and this section, with respect to a distribution from a section 403(b) annuity, an eligible retirement plan is an annuity contract, a custodial account, a retirement income account described in section 403(b), or an individual retirement plan. If a designated distribution is not an eligible rollover distribution, it is subject to the elective withholding provisions of section 3405(a) and (b) and § 35.3405–1 of this chapter and is not subject to the mandatory withholding provisions of section 3405(c) and this section.

(b) *Application of other statutory provisions.* See § 1.401(a)(31)–1 of this chapter concerning the requirements and the procedures for electing a direct rollover under section 401(a)(31). See section 402(c)(2) and (4), and § 1.402(c)–2, Q&A–3 through Q&A–10 and Q&A–14 of this chapter for rules to determine what constitutes an eligible rollover distribution. See § 1.402(f)–1, Q&A–1 through Q&A–3 and § 1.403(b)–2, Q&A–3 of this chapter concerning the notice that must be provided to a distributee, within a reasonable period of time before making an eligible rollover distribution. See § 1.403(b)–2, Q&A–1 and Q&A–2 of this chapter for guidance concerning the rollover provisions and direct rollover requirements for distributions from annuities described in section 403(b).

(c) *Effective date*—(1) *Statutory effective date*—(i) *General rule.* Section 3405(c), as added by UCA, applies to eligible rollover distributions made on or after January 1, 1993, even if the employee's employment with the employer maintaining the plan terminated before January 1, 1993 and even if the eligible rollover distribution is part of a series of payments that began before January 1, 1993.

(ii) *Special rule for governmental section 403(b) annuities.* Section 522 of UCA provides a special effective date for governmental section 403(b) annuities. This special effective date appears in § 1.403(b)–2T of this chapter (as it appeared in the April 1, 1995 edition of 26 CFR part 1).

(2) *Regulatory effective date.* This section applies to eligible rollover distributions made on or after October 19, 1995. For eligible rollover distributions made on or after January 1, 1993 and before October 19, 1995, § 31.3405(c)–1T (as it appeared in the April 1, 1995 edition of 26 CFR part 1), applies. However, for any distribution made on or after January 1, 1993 but before October 19, 1995, a plan administrator or payor may comply with the withholding requirements of section 3405(c) by substituting any or all provisions of this section for the corresponding provisions of § 31.3405(c)–1T, if any.

Q–2: May a distributee elect under section 3405(c) not to have Federal income tax withheld from an eligible rollover distribution?

A–2: No. The 20-percent income tax withholding imposed under section 3405(c)(1) applies to an eligible rollover distribution unless the distributee elects under section 401(a)(31) to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1 and § 1.403(b)–2, Q&A–2 of this chapter for provisions concerning the requirement that a distributee of an eligible rollover distribution be permitted to elect a distribution in the form of a direct rollover.

Q–3: May a distributee be permitted to elect to have more than 20-percent Federal income tax withheld from an eligible rollover distribution?

A–3: Yes. Under section 3402(p), a distributee of an eligible rollover distribution and the plan administrator or payor are permitted to enter into an agreement to provide for withholding in excess of 20 percent from an eligible rollover distribution. Any agreement must be made in accordance with applicable forms and instructions. However, no request for withholding will be effective between the plan administrator or payor and the distributee until the plan administrator or payor accepts the request by commencing to withhold from the amounts with respect to which the request was made. An agreement under section 3402(p) shall be effective for such period as the plan administrator or payor and the distributee mutually agree upon. However, either party to the agreement may terminate the agreement prior to the end of such period by furnishing a signed written notice to the other.

Q–4: Who has responsibility for complying with section 3405(c) relating to the 20-percent income tax withholding on eligible rollover distributions?

A–4: Section 3405(d) generally requires the plan administrator of a qualified plan and the payor of a section 403(b) annuity to withhold under section 3405(c)(1) an amount equal to 20 percent of the portion of an eligible rollover distribution that the distributee does not elect to have paid in a direct rollover. When an amount is paid under a qualified plan distributed annuity contract as defined in § 1.402(c)–2, Q&A–10 of this chapter, the payor is treated as the plan administrator. See Q&A–13 of this section concerning eligible rollover distributions from a qualified plan distributed annuity contract.

Q–5: May the plan administrator shift the withholding responsibility to the payor and, if so, how?

A–5: Yes. The plan administrator may shift the withholding responsibility to the payor by following the procedures set forth in § 35.3405–1, Q&A E–2 through E–5 of this chapter (relating to elective withholding on pensions, annuities and certain other deferred income) with appropriate adjustments, including the plan administrator's identification of amounts that constitute required minimum distributions.

Q–6: How does the 20-percent withholding requirement under section 3405(c) apply if a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

A–6: If a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to receive the remainder of the distribution, the 20-percent withholding requirement under section 3405(c) applies only to the portion of the eligible rollover distribution that the distributee receives and not to the portion that is paid in a direct rollover.

Q–7: Will the plan administrator be subject to liability for tax, interest, or penalties for failure to withhold 20 percent from an eligible rollover distribution that, because of erroneous information provided by a distributee, is not paid to an eligible retirement plan even though the distributee elected a direct rollover?

A–7: (a) *General rule.* If the plan administrator reasonably relied on adequate information provided by the

distributee (as described in paragraph (b) of this Q&A), the plan administrator will not be subject to liability for taxes, interest, or penalties for failure to withhold income tax from an eligible rollover distribution solely because the distribution is paid to an account or plan that is not an eligible retirement plan (as defined, with respect to distributions from qualified plans, in section 402(c)(8)(B) and § 1.402(c)–2, Q&A–2 of this chapter and, with respect to a distributions from section 403(b) annuities, in § 1.403(b)–2), Q&A–1 of this chapter. Although the plan administrator is not required to verify independently the accuracy of information provided by the distributee, the plan administrator's reliance on the information furnished must be reasonable. For example, it is not reasonable for the plan administrator to rely on information that is clearly erroneous on its face.

(b) *Adequate information.* The plan administrator has obtained from the distributee adequate information on which to rely in making a direct rollover if the distributee furnishes to the plan administrator: the name of the eligible retirement plan; a representation that the recipient plan is an individual retirement plan, a qualified plan, or a section 403(b) annuity, as appropriate; and any other information that is necessary in order to permit the plan administrator to accomplish the direct rollover by the means it has selected. This information must include any information needed to comply with the specific requirements of § 1.401(a)(31)–1, Q&A–3 and Q&A–4 of this chapter. For example, if the direct rollover is to be made by mailing a check to the trustee of an individual retirement account, the plan administrator must obtain, in addition to the name of the individual retirement account and the representation described above, the name and address of the trustee of the individual retirement account.

Q–8: Is an eligible rollover distribution that is paid to a qualified defined benefit plan subject to 20-percent withholding?

A–8: No. If an eligible rollover distribution is paid in a direct rollover to an eligible retirement plan within the meaning of section 402(c)(8), including a qualified defined benefit plan, it is reasonable to believe that the distribution is not includible in gross income pursuant to section 402(c)(1). Accordingly, pursuant to section 3405(e)(1)(B), the distribution is not a designated distribution and is not subject to 20-percent withholding.

Q–9: If property other than cash, employer securities, or plan loans is distributed, how is the 20-percent income tax withholding required under section 3405(c) accomplished?

A–9: When all or a portion of an eligible rollover distribution subject to 20-percent income tax withholding under section 3405(c) consists of property other than cash, employer securities, or plan loan offset amounts, the plan administrator or payor must apply § 35.3405–1, Q&A F–2 of this chapter and may apply § 35.3405–1, Q&A F–3 of this chapter in determining how to satisfy the withholding requirements.

Q–10: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution for purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding?

A–10: (a) *In general.* For purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding, a plan administrator may make the assumptions described in paragraphs (b), (c), and (d) of this Q&A in determining the amount of a distribution that is an eligible rollover distribution and a designated distribution. Q&A–17 of § 1.401(a)(31)–1 of this chapter provides assumptions for purposes of complying with section 401(a)(31). See § 1.402(c)–2, Q&A–15 of this chapter concerning the effect of these assumptions for purposes of section 402(c).

(b) *$5,000 death benefit.* A plan administrator may assume that a distribution that qualifies for the $5,000 death benefit exclusion under section 101(b) is the only death benefit being paid with respect to a deceased employee that qualifies for that exclusion. Thus, in such a case, the plan administrator may assume that the distribution is not an eligible rollover distribution to the extent that it would be excludible from gross income based on this assumption.

(c) *Required minimum distributions.* The plan administrator is permitted to determine the amount of the minimum distribution required to satisfy section 401(a)(9)(A) for any calendar year by assuming that there is no designated beneficiary.

(d) *Valuation of property.* In the case of a distribution that includes property, in calculating the amount of the distribution for purposes of applying section 3405(c), the value of the property may be determined in accordance with § 35.3405–1, Q&A F–1 of this chapter.

Q–11: Are there special rules for applying the 20-percent withholding requirement to employer securities and a plan loan offset amount distributed in an eligible rollover distribution?

A–11: Yes. The maximum amount to be withheld on any designated distribution (including any eligible rollover distribution) under section 3405(c) must not exceed the sum of the cash and the fair market value of property (excluding employer securities) received in the distribution. The amount of the sum is determined without regard to whether any portion of the cash or property is a designated distribution or an eligible rollover distribution. For purposes of this rule, any plan loan offset amount, as defined in § 1.402(c)–2, Q&A–9 of this chapter, is treated in the same manner as employer securities. Thus, although employer securities and plan loan offset amounts must be included in the amount that is multiplied by 20-percent, the total amount required to be withheld for an eligible rollover distribution is limited to the sum of the cash and the fair market value of property received by the distributee, excluding any amount of the distribution that is a plan loan offset amount or that is distributed in the form of employer securities. For example, if the only portion of an eligible rollover distribution that is not paid in a direct rollover consists of employer securities or a plan loan offset amount, withholding is not required. In addition, if a distribution consists solely of employer securities and cash (not in excess of $200) in lieu of fractional shares, no amount is required to be withheld as income tax from the distribution under section 3405 (including section 3405(c) and this section). For purposes of section 3405 and this section, employer securities means securities of the employer corporation within the meaning of section 402(e)(4)(E)(ii).

Q–12: How does the mandatory withholding rule apply to net unrealized appreciation from employer securities?

A–12: An eligible rollover distribution can include net unrealized appreciation from employer securities, within the meaning of section 402(e)(4), even if the net unrealized appreciation is excluded from gross income under section 402(e)(4). However, to the extent that it is excludable from gross income pursuant to section 402(e)(4), net unrealized appreciation is not a designated distribution pursuant to section 3405(e)(1)(B) because it is reasonable to believe that it is not includable in gross income. Thus, to the extent that net unrealized appreciation is excludable from gross income pursuant to section 402(e)(4), net

unrealized appreciation is not included in the amount of an eligible rollover distribution that is subject to 20-percent withholding.

Q–13: Does the 20-percent withholding requirement apply to eligible rollover distributions from a qualified plan distributed annuity contract?

A–13: The 20-percent withholding requirement applies to eligible rollover distributions from a qualified plan distributed annuity contract as defined in Q&A–10 of § 1.402(c)–2 of this chapter. In the case of an eligible rollover distribution from such an annuity contract, the payor is treated as the plan administrator for purposes of section 3405. See § 1.401(a)(31)–1, Q&A–16 of this chapter concerning the direct rollover requirements that apply to distributions from such an annuity contract and see § 1.402(c)–2, Q&A–10 of this chapter concerning the treatment of distributions from such annuity contracts as eligible rollover distributions.

Q–14: Must a payor or plan administrator withhold tax from an eligible rollover distribution for which a direct rollover election was not made if the amount of the distribution is less than $200?

A–14: No. However, all eligible rollover distributions received within one taxable year of the distributee under the same plan must be aggregated for purposes of determining whether the $200 floor is reached. If the plan administrator or payor does not know at the time of the first distribution (that is less than $200) whether there will be additional eligible rollover distributions during the year for which aggregation is required, the plan administrator need not withhold from the first distribution. If distributions are made within one taxable year under more than one plan of an employer, the plan administrator or payor may, but need not, aggregate distributions for purposes of determining whether the $200 floor is reached. However, once the $200 threshold has been reached, the sum of all payments during the year must be used to determine the applicable amount to be withheld from subsequent payments during the year.

Q–15: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

A–15: Generally, the plan administrator, as defined in section 414(g), is responsible for maintaining the records and making the required reports with respect to eligible rollover distributions from qualified plans. However, if the plan administrator fails to keep the required records and make the required reports, the employer maintaining the plan is responsible for the reports and returns.

Q–16: What eligible rollover distributions must be reported on Form 1099–R?

A–16: Each eligible rollover distribution, including each eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover, must be reported on Form 1099–R in accordance with the instructions for Form 1099–R. For purposes of the reporting required under section 6047(e), a direct rollover is treated as a distribution that is immediately rolled over to an eligible retirement plan. Distributions that are not eligible rollover distributions are subject to the reporting requirements set forth in § 35.3405–1 of this chapter and applicable forms and instructions.

Q–17: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

A–17: (a) *Individual retirement plan.* If a distributee elects to have an eligible rollover distribution paid to an individual retirement plan in a direct rollover, the eligible rollover distribution is reported on Form 5498 as a rollover contribution to the individual retirement plan, in accordance with the instructions for Form 5498.

(b) *Qualified plan or section 403(b) annuity.* If a distributee elects to have an eligible rollover distribution paid to a qualified plan or section 403(b) annuity, the recipient plan or annuity is not required to report the receipt of the rollover contribution.

§ 31.3405(c)–1T [Removed]

Par. 7. Section 31.3405(c)–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.401(a)(31)–1T	1545–1341
* * * * *	
1.402(c)–2T	1545–1341
* * * * *	
1.402(f)–2T	1545–1341
* * * * *	
1.403(b)–2T	1545–1341
* * * * *	
31.3405(c)–1T	1545–1341
* * * * *	

2. Revising the entry for 1.402(f)–1 and adding entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.401(a)(31)–1	1545–1341
* * * * *	
1.402(c)–2	1545–1341
* * * * *	
1.402(f)–1	1545–1341
* * * * *	
1.403(b)–2	1545–1341
* * * * *	
31.3405(c)–1	1545–1341
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 29, 1995.

Cynthia G. Beerbower,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–23265 Filed 9–15–95; 4:00 pm]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8620]

RIN 1545–AT75

Notice, Consent, and Election Requirements of Sections 411(a)(11) and 417

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements under section 417. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1471. Responses to this collection of information are required to assure that the rights of qualified plan participants are protected.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(a)(11) and section 417(e). Section 1.411(a)–11(c) provides that a participant's consent to a distribution under section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Section 1.417(e)–1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights required under section 417(a)(3).

The October 1992 temporary regulations that provided guidance on the amendment to section 402(f) made by the Unemployment Compensation Amendments of 1992 (UCA), published in the Federal Register at 57 FR 48163, generally prescribed this 90/30-day time period for purposes of the notice requirement under that section. In the preamble to those regulations, the IRS and Treasury requested comments on the appropriateness of this time period for section 411(a)(11), as well as for section 402(f).

In response to initial comments on the UCA proposed and temporary regulations, additional guidance was provided in Notice 93–26 (1993–1 C.B. 293), which modified the 30-day time period for purposes of sections 402(f) and 411(a)(11). These temporary regulations modify the 30-day time period in § 1.411(a)–11 in a manner consistent with Notice 93–26 and also provide a more limited modification to the 30-day time period in § 1.417(e)–1. These temporary regulations are being published in conjunction with the final regulations implementing the UCA changes, published elsewhere in this issue of the Federal Register.

Explanation of Provisions

1. Overview

Section 411(a)(11) provides that, if the value of a participant's accrued benefit exceeds $3,500, a qualified plan generally may not distribute the benefit to the participant without the participant's consent.

Section 401(a)(11) requires that certain distributions be made in the form of a qualified joint and survivor annuity (QJSA) unless, in accordance with section 417, the participant waives the QJSA and elects a different form of benefit. Profit-sharing plans and stock bonus plans that meet the requirements of sections 401(a)(11)(B)(iii) (I) through (III) are not subject to the survivor annuity requirements of sections 401(a)(11) and 417.

Section 417 sets forth the requirements applicable to a waiver of the QJSA. Section 417(a) requires the participant to obtain the consent of the participant's spouse, if any, to any waiver of the QJSA and election of a form of benefit other than a QJSA. Any election made by the participant must be revocable during the 90-day period ending on the annuity starting date. Section 417(a)(3) requires that, within a reasonable period of time before the participant's annuity starting date, a plan provide the participant with a notice explaining the participant's right to the QJSA and the participant's right to waive the QJSA.

2. Implementation of Notice 93–26 Modification of 30-Day Period

Under Notice 93–26, if, after having received the notice of distribution rights described in § 1.411(a)–11, a participant affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution is made less than 30 days after the notice was provided to the participant. However, the participant must be notified that he or she has the opportunity to consider whether to elect a distribution (and, if applicable, a particular distribution option) for at least 30 days after the notice is provided. The plan administrator may provide this information to the participant using any method that is reasonably designed to attract the attention of the participant.

The comments on the guidance in Notice 93–26 with respect to section 411(a)(11) were generally favorable. Accordingly, these temporary regulations amend § 1.411(a)–11 by modifying the 30-day rule in a manner consistent with Notice 93–26.

The final UCA regulations and these temporary regulations are structured to allow plan administrators to provide the participant notices required under sections 402(f), 411(a)(11) and 417 at the same time. Under the final UCA regulations, the section 402(f) notice must be provided no more than 90 and no less than 30 days before the date of distribution. Similarly, these temporary regulations provide that the 30-day and 90-day periods for purposes of the section 411(a)(11) notice are measured from the date that the distribution commences.

Alternatively, the plan administrator may substitute the annuity starting date, as defined in § 1.401(a)–20, Q&A–10, for the date the distribution commences for purposes of both the section 402(f) notice and the section 411(a)(11) notice. If a plan administrator uses this alternative, the 90/30-day time period will be the same for the notices required under sections 402(f), 411(a)(11) and 417.

3. Modification of 30-Day Time Period for QJSA Explanation

Notice 93–26 did not affect the requirements that sections 401(a)(11) and 417 and related regulations impose on distributions subject to those sections. Some commentators requested that the modification provided in Notice 93–26 with respect to section 411(a)(11) be made to the 30-day time period in the regulations under section 417. These temporary regulations under section 417 provide substantial relief from the constraints imposed by the 30-day time period but, for the reasons noted below, do not adopt a rule that is identical to that provided under section 411(a)(11).

After careful consideration, the IRS and Treasury have concluded that it would not be consistent with the statutory purpose of section 417 to adopt the same modification to the 30-day time period that was adopted by Notice 93–26 under section 411(a)(11). Plans subject to section 417 often provide a variety of distribution options that may have different actuarial values and can be difficult to evaluate. In addition, section 417 establishes a revocation period for a waiver of the QJSA and provides explicit safeguards to ensure informed consent of the participant and the participant's spouse. For example, section 417 requires witnessed or notarized spousal consent that acknowledges the effect of the election to waive the QJSA. This statutory structure reflects Congressional recognition that a distribution election with respect to annuity benefits is an important financial decision that affects the retirement security of the participant and the participant's spouse. In view of these concerns, these temporary regulations retain a minimum period for participants and spouses to consider or reconsider the distribution options after the section 417 notice is provided.

However, the IRS and Treasury are also aware that, if a plan provides an unreduced early retirement annuity, the application of the current 30-day election and revocation period might cause the participant to lose a month's benefit. Moreover, a full 30-day election and revocation period may not be necessary for a participant (and where applicable, the participant's spouse) who, after being provided with the opportunity to carefully consider the decision, affirmatively elects a form of distribution.

In order to address these concerns, while still providing sufficient time to consider (or reconsider) the decision whether to waive the QJSA, these temporary regulations permit the plan (or, where not inconsistent with the terms of the plan, the plan administrator) to commence distributions before the end of the 30-day time period, if certain requirements are met. Specifically, after an affirmative distribution election, with any applicable spousal consent, the plan may permit the distribution to commence at any time more than seven days after the explanation of the QJSA was provided to the participant. The annuity starting date must be a date after the explanation of the QJSA is provided to the participant, but may precede the date the participant affirmatively elects a distribution or the date the distribution commences. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the QJSA explanation is provided. For example, if a married participant receives the explanation of the QJSA on November 28 and elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate single life annuity, the annuity starting date is permitted to be December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date.

4. 90-Day Time Period and Method of Providing Notice

Some commentators requested an expansion of the 90-day time period. More broadly, commentators asked that the requirements of sections 411(a)(11), 417, and 402(f) be addressed in the context of new technologies that use electronic media, such as telephone or computer systems, to automate plan administrative functions that traditionally have been processed manually by use of paper-based systems (e.g., notices to participants and participant distribution requests). For example, some commentators have suggested that plans be permitted to provide an annual written notice if a summary of the notice is provided through these new technologies.

The IRS and Treasury continue to believe that the section 411(a)(11) and section 417 notices, as well as the section 402(f) notice, should be provided close to the time participants are considering the distribution to which the notice applies. Therefore, these temporary regulations do not change the 90-day time period.

Although these temporary regulations provide no additional guidance on the use of electronic media, the IRS and Treasury will continue to consider possible modifications to the notice and consent requirements that might be appropriate to accommodate new technologies, if adequate safeguards are provided, and invite comments on this issue. These final regulations specifically delegate authority to the Commissioner to modify the notice, consent, and election requirements or provide additional guidance, in the Internal Revenue Bulletin, with respect to those requirements.

5. Effective Date

Because these temporary regulations relax the requirements that plans must satisfy, they are effective September 22, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. § 1.411(a)-(11) is amended as follows:

1. Paragraph (c)(2)(ii) is revised to read as set forth below.

2. Paragraph (c)(2)(iii) is removed.

§ 1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) * * *

(ii) For additional rules concerning the consent requirement of section 411(a)(11), see § 1.411(a)–11T(c)(2)(ii) through (v) and (c)(8).

* * * * *

Par. 3. § 1.411(a)–11T is added to read as follows:

§ 1.411(a)–11T Restriction and valuation of distributions (temporary).

(a) and (b) [Reserved]

(c) *Consent, etc. requirements*—(1) *General rule.* [Reserved]

(2) *Consent*—(i) [Reserved]

(ii) Written consent of the participant to the distribution must not be made before the participant receives the notice of his or her rights specified in this paragraph (c)(2) and must not be made more than 90 days before the date the distribution commences.

(iii) A plan must provide participants with notice of their rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided that the following requirement is met. The plan administrator must provide information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (c)(2)(iii)) the participant has a right to at least 30 days to consider whether to consent to the distribution.

(iv) For purposes of satisfying the requirements of this paragraph (c)(2), the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)–20, Q&A–10, for the date the distribution commences.

(v) See § 1.401(a)–20, Q&A–24 for a special rule applicable to consents to plan loans.

(3) through (7) [Reserved].

(8) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(*b*) of this chapter.

Par. 4. § 1.417(e)–1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(3) *Time of consent.* For distributions on or after September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)–1T(b) (3) and (4) also apply. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)–1(b)(3) (as it appeared in the April 1, 1995 edition of 26 CFR part 1) apply.

* * * *

Par. 5. Section 1.417(e)–1T is amended by adding paragraph (b) to read as follows:

§ 1.417(e)–1T Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417 (temporary).

* * * * *

(b) *Consent, etc. requirements*—(1) *General rule.* [Reserved]

(2) *Consent.* [Reserved]

(3) *Time of consent*—(i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the annuity starting date is less than 30 days after the written explanation was provided to the participant, provided that the following requirements are met:

(A) The plan administrator provides information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (b)(3)(ii)) the participant has a right to at least 30 days to consider whether to waive the QJSA and consent to a form of distribution other than a QJSA.

(B) The participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant. However, the plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant and before the date that the distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section.

(D) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(iii) The following example illustrates the provisions of this paragraph (b)(3):

Example. Employee E, a married participant in a defined benefit plan who has terminated employment, is provided with the explanation of the QJSA on November 28. Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule.

(4) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(*b*) of this chapter.

* * * * *

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.

Par. 7. In § 602.101, paragraph (c) is amended by adding to the table the following entries in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.411(a)–11T	1545–1471

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.417(e)–1T	1545–1471
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: August 29, 1995.
Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 95–23263 Filed 9–15–95; 4:00 pm]
BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 94–105]

RIN 2115–AE99

Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard revises the regulations describing its rulemaking procedures to provide for a ''direct final rule'' process for use with noncontroversial rules. Under the direct final rule procedure, a rule will become effective 90 days after publication in the Federal Register unless the Coast Guard receives written adverse comment within sixty days. This new procedure should expedite the promulgation of routine, noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington D.C. 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267–6004.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 14, 1995, the Coast Guard published a notice of proposed rulemaking entitled ''Coast Guard Rulemaking Procedures'' in the Federal Register (60 FR 31267) with a thirty day comment period which ended July 14. In response to a request for additional time, the Coast Guard published a notice in the August 1, 1995 Federal Register (60 FR 39130) reopening the comment period on the proposal for an additional thirty days, until August 31, 1995. Over both comment periods, the Coast Guard received fourteen letters commenting on the proposal. No public meeting was requested, and none was held.

Discussion of Comments and Changes

The Coast Guard received fourteen comments in response to its proposal to implement a direct final rule procedure from a variety of parties including an insurance broker, a shipping company, a commercial fisherman, a corporation interested in offshore operations, maritime consultants, industry associations and the Administrative Conference of the United States. One comment, from a national manufacturers association representing over 1,600 manufacturers association representing over 1,600 manufacturers of recreational boats and equipment, fully supported the proposal for an expedited rulemaking process. The comment from the Administrative Conference of the United States (Administrative Conference) expressed pleasure at the Coast Guard's proposal to use direct final rulemaking and took the opportunity to compare the Coast Guard's proposed procedure to the Administrative Conference's recently adopted Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking.'' the other comments were generally supportive of the idea of a streamlined rulemaking process, but expressed concerns with the shortness of the proposed comment period, the list of subjects suggested by the Coast Guard for the direct final rule process, the possibility that there may not be 30 days notice before the effective date of the rule as required by the Administrative Procedure Act (APA) and with the lack of an adequate definition of an ''adverse comment''. Additionally, one comment contended that all rulemakings are ''controversial'' and therefore the direct final rule process is not appropriate for any rulemaking.

Eight comments directly objected to the proposed thirty day comment period. The comment from the Administrative Conference supported this provision as providing the required comment under the APA, but took no specific position on the actual length of the period. The comments which objected to the length of the comment period argued that it often took much longer than thirty days for a proposal to be disseminated to, and analyzed by, potentially interested parties. According to the comments, this additional time is required because of a number of factors. One factor cited by three comments was the fact that many mariners who may be interested in a proposal are often out to sea for periods of time greater than thirty days. Other comments also noted the time delay caused by the postal system in receiving copies of the Federal Register and the fact that many people learn of new proposed rules through industry and trade publications which need time to publish and mail the information. Additionally, one comment raised the question of whether the short comment period satisfies § 553(c) of the APA which requires an agency to give interested parties an adequate opportunity to participate in the rulemaking. The comments suggested increased comment periods ranging from 60 to 160 days so that a rule published as a direct final rule would become effective in the range of 90 to 180 days after publication.

The Coast Guard understands that it takes time for information regarding proposed rules to reach interested parties. Public participation in the rulemaking process is important to, and highly encouraged by, the Coast Guard. The Coast Guard is planning to use the direct final rule procedure only for rules it considers to be noncontroversial and for which no adverse comment is anticipated. Consequently, the Coast Guard believes that the direct final rulemaking procedure provides the public an adequate opportunity to comment on a rule subject to this procedure before the rule becomes effective. If an adverse comment or a notice of intent to submit an adverse comment is received within the comment period, the direct final rule will be withdrawn without ever having taken effect. If the Coast Guard later decides to proceed with the rulemaking, a new notice of proposed rulemaking will be published. This process will give the pubic an adequate opportunity to participate in the rulemaking procedure before a rule goes into effect. The Coast Guard believes that a lengthy comment period would defeat the purpose of having an expedited rulemaking process. Nevertheless, to ensure that the

public has a meaningful opportunity to participate, the Coast Guard is increasing the minimum comment period stated in § 1.05–55(c) under the direct final rule process from 30 to 60 days, and preserving an option for any particular rulemaking to have a longer comment period.

Three of the comments, including one from a national trade association representing 23 U.S.-flag carriers and one from a shipping company which operates for U.S.-flag ships, expressed concern over the list of subjects suggested as appropriate for the direct final rule process by the Coast Guard. Two of the comments expressed the opinion that the proposed procedure would be appropriate for some of the types of rulemakings suggested but not for all. In particular, both of these comments objected to the use of the direct final rule process for the waiver of navigation and vessel inspection laws and regulations, the regulation or description of anchorage areas, the regulation or description of shipping safety fairways and the regulation or description of offshore traffic separation schemes. The trade association also objected to the use of the proposed procedure to adopt technical standards set by outside organizations and to regulate the compatibility of cargoes. The shipping company comment also objected to using the procedure to establish safety and security zones.

A comment from a national association of maritime educators commented that in the past, the association has offered comments on many subjects of the type included on the list of possible subjects and therefore viewed none of the proposed subjects as ''noncontroversial'' and objected to the entire list of subjects. That comment also stated that there is no such thing as a ''noncontroversial'' rule and stated that the decision whether a rule is deemed ''noncontroversial'' or not is a subjective rather than objective standard.

The Coast Guard realizes that the direct final rule process is not the proper procedure for use with all rulemakings. On the other hand, there are numerous rulemakings which the Coast Guard does believe to be ''noncontroversial'' in nature and for which the Coast Guard does not anticipate adverse comments. The suggested list of subjects stated in the NPRM was not meant to be a comprehensive or ironclad list of subjects for use with the direct final rule process. Every rulemaking will be evaluated independently to determine: (1) Whether it is likely to be noncontroversial in nature; and (2) whether the direct final rule process is appropriate. If during the comment period any adverse comment or notice of intent to submit an adverse comment is received, the rule will be withdrawn. If a rule is withdrawn and the Coast Guard decides to proceed with the rulemaking, a separate notice of proposed rulemaking will be published unless an exception to the APA requirement for notice and comment applies. The Coast Guard believes that this procedure will guarantee the public an adequate opportunity to participate in the rulemaking procedure and inform the Coast Guard of opposition to a rulemaking which the Coast Guard viewed as noncontroversial. Both by requiring that a rulemaking be deemed to be noncontroversial before being published as a direct final rule and by requiring that if an adverse comment is received a rulemaking published under this process be withdrawn and a separate NPRM published to proceed, the Coast Guard believes that sufficient safeguards exist to ensure no rule is implemented without adequate opportunity for public participation.

The comment from the Administrative Conference in addition to two other comments, expressed concern that the procedure proposed may not always satisfy § 553(d) of the APA which requires thirty days notice prior to the effective date of a rule. The specific concern stated by the Administrative Conference is that the notice stating that the Coast Guard has received no adverse comment and therefore, the rule will go into effect as originally scheduled, may not be published thirty days before the effective date of the rule. The conference recommended either making the rule effective thirty days after the date of the described notice or specifying a date after the close of the comment period by which the Coast Guard will notify the public whether the direct final rule will become effective, with the rule's effective date at least 30 days after such specified date. The Coast Guard has decided to go forward with the second alternative and therefore will publish a specific date in the direct final rule by which the public will be notified of whether the rule will go into effect.

One comment from a maritime safety specialist objected to the lack of adequate guidelines concerning what the Coast Guard would consider to be an ''adverse comment.'' In addition, the Administrative Conference in Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking'' (Recommendation) proposed a definition of adverse comment that differed from that proposed by the Coast Guard. The Administrative Conference acknowledged the difference between its own definition and the Coast Guard's, but viewed the Coast Guard's proposed definition as reasonable.

Section 1.05–55(c) of the NPRM stated that an adverse comment would be any comment received by the Coast Guard which objects to a proposed rule as written. The preamble of the NPRM further explained that neither a comment submitted in support of a rule nor one suggesting that the policy or requirements of a rule should or should not be extended to a Coast Guard program outside the scope of the rule will be considered as adverse. On the other hand, the Administrative Conference in its Recommendation suggested that the definition of significant adverse comment be ''one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.'' The Administrative Conference went on to state in its Recommendation that agencies ''should consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process.'' Because the Coast Guard believes that the Administrative Conference's recommended definition of adverse comment provides better guidance and a clearer definition of what types of comments will be considered adverse, the Coast Guard has decided to adopt the Administrative Conference's recommended definition of adverse comment. An adverse comment is now defined in § 1.05–55(f).

The Administrative Conference comment also suggested that in addition to publishing the initial notice in the final rule section of the Federal Register, that a cross reference be inserted in the proposed rule section. The Coast Guard agrees with this idea and will do so.

In addition to the changes discussed above, a few minor editorial changes were made to the language of the rule to promote the public's understanding of the direct final rule process.

Explanation of Procedure

The Coast Guard is establishing a new direct final rulemaking procedure for noncontroversial rules. This process is consistent with the goals of the National Performance Review, a recent Presidential initiative to reorganize and streamline the Federal government. The process is also consistent with recommendations of the Administrative Conference of the United States and

meets the requirements for providing an opportunity for public notice and comment under the Administrative Procedure Act (APA) (5 U.S.C. 553).

Under this procedure, the Coast Guard will publish direct final rules in the final rule and proposed rule sections of the Federal Register. The preamble to a direct final rule will indicate that no adverse comment is anticipated and that the rule will become effective not less than 90 days after publication unless written adverse comment or written intent to submit adverse comment is received within a specified time, usually not less than 60 days. The direct final rule will also state a date by which the Coast Guard will provide notice of whether the rule will be effective. This procedure will ensure that, as required by the APA, the public will be given notice of Coast Guard rulemaking actions and will have an opportunity to participate in the rulemaking by submitting comments.

If no written adverse comment or written notice of intent to submit an adverse comment is received in response to the publication of a direct final rule, the Coast Guard will then publish a notice in the Federal Register, stating that no adverse comment was received and confirming that the rule will become effective as scheduled. However, if the Coast Guard receives any written adverse comment or any written notice of intent to submit an adverse comment, then the Coast Guard will publish a notice in the final rule and proposed rule sections of the Federal Register to announce withdrawal of the direct final rule. If adverse comments clearly apply to only part of a rule, and that part is severable from the remaining portions, such as a rule that deletes several unrelated regulations, the Coast Guard may adopt as final those parts of the rule on which no adverse comments were received. The part of the rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published, unless an exception to the APA requirement for notice and comment applies.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The change in procedure will not impose any costs on the public. In cases where the rule would result in cost savings, the cost savings would occur sooner with the use of direct final rule procedure.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard has evaluated this rule under the Regulatory Flexibility Act. This rule will not have substantive impact on the public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation as a regulation of a procedural nature. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 1

Administrative practice and procedures, Authority delegations (Government agencies), Coast Guard, Freedom of information, Penalties.

For the reasons set out in the preamble, the Coast Guard is amending Subpart 1.05 of Part 1 of Title 33, Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

Subpart 1.05—[Amended]

1. The authority citation for Subpart 1.05 continues to read as follows:

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; 49 CFR 1.4(b), 1.45(b), and 1.46.

2. Section 1.05–55 is added to read as follows:

§ 1.05–55 Direct final rule.

(a) A direct final rule may be issued to allow noncontroversial rules that are unlikely to result in adverse public comment to become effective more quickly.

(b) A direct final rule will be published in the Federal Register with an effective date that is generally at least 90 days after the date of publication.

(c) The public will usually be given at least 60 days from the date of publication in which to submit comments or notice of intent to submit comments.

(d) If no adverse comment or notice of intent to submit an adverse comment is received within the specified period, the Coast Guard will publish a notice in the Federal Register to confirm that the rule will go into effect as scheduled.

(e) If the Coast Guard receives a written adverse comment or a written notice of intent to submit an adverse comment, the Coast Guard will publish a notice in the final rule section of the Federal Register to announce withdrawal of the direct final rule. If an adverse comment clearly applies to only part of a rule, and it is possible to remove that part without affecting the remaining portions, the Coast Guard may adopt as final those parts of the rule on which no adverse comment was received. Any part of a rule that is the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, a separate Notice of Proposed Rulemaking (NPRM) will be published unless an exception to the Administrative Procedure Act requirements for notice and comment applies.

(f) A comment is considered adverse if the comment explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be

ineffective or unacceptable without a change.

Dated: September 15, 1995.

J.E. Shkor,

U.S. Coast Guard Chief Counsel.

FR Doc. 95–23518 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF02

Schedule for Rating Disabilities; Hemic and Lymphatic Systems

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Schedule for Rating Disabilities of the Hemic and Lymphatic Systems. The effect of this action is to update the hemic and lymphatic portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: This amendment is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 1800 G Street, Washington, DC, 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 30, 1993, (58 FR 26080–83) VA published a proposal to amend the Schedule for Rating Disabilities of the hemic and lymphatic systems. Interested persons were invited to submit written comments, suggestions or objections on or before June 1, 1993. We received comments from the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America and one comment from a concerned individual.

We proposed to reduce the evaluation for splenectomy, diagnostic code 7706, from 30 percent to 10 percent. Several commenters felt, for various reasons, that the evaluation for splenectomy should be more than 10 percent.

One commenter agreed that antibiotics may compensate for any increased susceptibility to infection, but was not persuaded that medical treatment is so effective that disabling consequences of splenectomy are nearly eliminated. He maintained that asplenic patients require vigilant medical intervention to ward off infections. Another commenter suggested that after splenectomy, patients must carefully avoid activities that may result in trauma and avoid exposure to infection, and that these environmental restrictions substantially limit the range of vocational possibilities, resulting in industrial impairment greater than the 10 percent proposed for this disability. A third commenter stated that since he has undergone a splenectomy, employers have turned him down due to high risk and that his life insurance is more expensive.

On reconsideration, we have determined that an evaluation of 20 percent is warranted instead of 10 percent because of the many functions that the spleen performs in the areas of immune response, filtration of the blood, iron reutilization, blood volume regulation and others, and that splenectomy increases susceptibility to certain infections, such as those caused by encapsulated pneumococcus bacteria. This increased susceptibility requires that splenectomy patients restrict their activities, resulting in moderate industrial impairment, which we feel is consistent with the 20 percent level of disability. This level of disability is assigned throughout the rating schedule for ''moderate'' disability, for example, under the diagnostic codes for liver abscess (7313), pellagra (6315), resection of large intestine (7329) and erythromelalgia (7119).

One commenter stated that asplenia should be included in the evaluation criteria for sickle cell anemia. We do not agree. If removal of the spleen is necessary in the treatment of sickle cell anemia, the splenectomy will be evaluated separately under diagnostic code 7706, and combined.

One commenter assumed that complications of splenectomy such as anemia would be rated on the symptomatology demonstrated. He is correct and, for the sake of clarity, we have added a note instructing the rater to separately evaluate complications if they become manifest to a compensable degree.

One commenter felt that the 30 percent evaluation for splenectomy should be ''grandfathered'', and in fact it is. In section 103(a) of the Veterans' Benefits Programs Improvement Act of 1991 (Pub. L. 102–86) Congress modified 38 U.S.C. 1155 to provide that a readjustment to the rating schedule will not result in a reduction of any disability evaluation in effect on the date of the readjustment unless that disability has actually improved. Given the permanent nature of a splenectomy, a 30 percent evaluation assigned under the prior rating schedule will be protected. The effect of this change is, therefore, prospective only.

One commenter felt that VA should contact all veterans who would be affected by the change in the evaluation of splenectomy, rather than requiring them to read the Federal Register.

Publication in the Federal Register is the legal means for any federal agency to notify the public of changes to regulations. Furthermore, since this change is prospective, taking the additional step of contacting asplenic veterans who are currently receiving benefits would serve no purpose since they will not be affected by this change in the regulation.

One commenter believed that there should be a note following the evaluation formula for anemia, diagnostic code 7700, instructing the rater to evaluate chronic residuals of the disease separately.

We agree and have added a note following the rating criteria for diagnostic code 7700, anemias, to instruct the rater to evaluate the complications of pernicious anemia, such as dementia or peripheral neuropathy, separately. These complications occur often enough that this instruction is warranted to ensure consistent evaluations. Furthermore, the note is consistent with instructions for other conditions throughout the schedule, such as lupus erythematosus, (diagnostic code 6350), leprosy (Hansen's Disease), (6302), and rheumatoid arthritis, (5002), which instruct the rater to evaluate residuals separately.

The proposed levels of evaluations for anemia, diagnostic code 7700, were based solely on hemoglobin levels. One commenter noted that the key determination in evaluating the degree of disability is not the laboratory value, but the primary diagnosis and compensatory level of the cardiovascular system. He felt, therefore, that the purely objective criteria of hemoglobin levels are inadequate for rating anemia unless clinical findings are also considered.

The normal level of hemoglobin differs by sex, with men having a higher level, on the average, than women. Individuals also vary in the possible compensatory mechanisms, such as tachycardia, brought to bear when anemia develops. Along with the level of hemoglobin, the speed of onset of the anemia helps determine the symptoms. We agree, therefore, that levels of hemoglobin in combination with clinical findings will allow a better

assessment of disability than either alone. We have revised the criteria to include clinical findings such as a weakness, easy fatigability, headaches, lightheadedness, or shortness of breath on mild exertion. We have also added a 10 percent evaluation because there are patients with a hemoglobin level of 10gm/100ml or less who also have symptoms such as weakness, easy fatigability or headaches. Those with a hemoglobin level of 10gm/100ml or less who are asymptomatic will be assigned a zero percent evaluation. This provide a clear separation between the requirements for the 10% and 0% levels since they require the same hemoglobin levels.

The proposed evaluation formulas for agranulocytosis, diagnostic code 7702, and aplastic anemia, diagnostic code 7716, provided for 100, 50 and zero percent evaluations. One commenter suggested that there should be a 60 percent evaluation level.

We have reviewed the proposed evaluation criteria for agranulocytosis (diagnostic code 7702) and apastic anemia (diagnostic code 7716) and agree that a wider range of evaluation levels is warranted because of the range of possible manifestations of the conditions. We have, therefore, redesignated the evaluations proposed as 50 percent disabling for both of these disabilities as 60 percent disabling, and added 30 percent and 10 percent evaluation levels. The 30 percent levels are based on the number of transfusions required or infections that occur, and the 10 percent levels are based on the need for continuous medication for control. We have removed the 0 percent evaluation level because a noncompensable evaluation can always be assigned under § 4.31 of this section whenever the residuals required for a compensable evaluation are not shown. Retaining the 0 percent evaluation level would be redundant. These changes provide a realistic range of evaluations and clear guidelines for assigning those evaluations.

The proposed regulation provided an indefinite total evaluation for aplastic anemia, diagnostic code 7716, following bone marrow transplant, with mandatory VA examination six months following hospital discharge, with any change based on that examination subject to the provisions of § 3.105(e). This is consistent with other diseases of this type, such as malignancies, leukemia and anemia.

One commenter stated that the post-hospital stabilization period for aplastic anemia, diagnostic code 7716, should be one year, not six months. We do not concur. A person who has required hospitalization for aplastic anemia would not be discharged unless stable, and it is reasonable to examine the patient six months thereafter to verify that the condition has indeed stabilized. The purpose of the VA examination six months after hospital discharge is to gather medical information regarding the actual level of disability. Therefore, there would be no possibility of an immediate reduction. Should the examination demonstrate that the condition remains totally disabling, the evaluation will not be changed.

The proposed evaluation formula for leukemia, diagnostic code 7703, includes instructions to otherwise rate as anemia (code 7700) or aplastic anemia (code 7716), whichever would result in the greater benefit, and a note instructing the rater to continue the 100 percent evaluation indefinitely following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedures, with a mandatory BA examination six months following hospital discharge.

One commenter stated that evaluations less than 100 percent for leukemia should not be based on diagnostic codes 7700 or 7716.

We do not agree. Using the evaluation criteria from other codes is common in the rating schedule and this is consistent with that practice. The symptoms and treatments in the criteria for anemia and aplastic anemia are the same as those for leukemia and the percentage levels reflect the amount of disability.

One commenter pointed out an inconsistency between the proposed criteria for a 100 percent evaluation and the NOTE: the NOTE establishes the length of time that a 100 percent evaluation will continue after surgery or the termination of radiation, chemotherapy or other therapeutic procedure, whereas the criteria for a 100 percent evaluation require ''intensive treatment'' such as periodic irradiation or transfusion. The language in the evaluation criteria was retained from the 1945 rating schedule. Since ''intensive treatment'' might be construed as being more restrictive than the language of the NOTE—an effect we did not intend—we have revised that language to indicate that a 100 percent evaluation will be assigned while the disease is active or during a treatment phase. That language not only eliminates the perceived disparity between the evaluation criteria and the Note under diagnostic code 7703, it is also consistent with the language in the evaluation criteria for Hodgkin's disease (diagnostic code 7709) and non-Hodgkin's lymphoma (7715).

We have reworded the NOTE following code 7703, leukemia, for clarity. No substantive change is intended.

One commenter stated that polycythemia vera, code 7704, warrants a higher evaluation than 40 percent if myelosuppressive therapy is necessary.

Polycythemia vera is a readily managed disorder in most patients that can remain asymptomatic for long periods. Although inadequate management of the red cell mass can result in both thrombotic and hemorrhagic complications, control of blood volume and viscosity with the use of phlebotomy, supplemented when indicated with the use of myelosuppression, can ensure most patients with polycythemia vera a prolonged period of relatively symptom-free survival. (*Cecil, Textbook of Medicine*, 19th edition, 1992, pages 925–29.) On the other hand, certain myelosuppressants, such as P32 and chlorambucil, can have severe side effects and possibly lead to the development of leukemia in polycythemia patients. On the basis of this comment, we have revised the evaluation criteria for polycythemia by adding a 100 percent evaluation during periods of myelosuppressive therapy and for three months after completion of the therapy. Further, we have revised the proposed criteria for the 40 percent evaluation, which will now be assigned when the condition is controlled by phlebotomy, and added a 10 percent evaluation. As a result, a total evaluation will be assigned when the disease is active and the patient is being treated with myelosuppressants, a 40 percent evaluation will be assigned when the disease is controlled with phlebotomy, and a 10 percent evaluation will be assigned when the condition is stabilized with or without medication. We have removed the 0 percent level since a noncompensable evaluation can be assigned under § 4.31 of this section at any time when required residuals are not shown. Retaining the 0 percent evaluation level would be redundant. In our judgment, these changes will provide evaluations which accurately reflect the levels of this disability.

The same commenter suggested that the frequency of phlebotomies should be evaluated the same as the frequency of blood transfusions for aplastic anemia (diagnostic code 7716).

Phlebotomy, the removal of blood, is a different procedure than transfusion, the injection of blood. Different risks are involved and the amount of time before symptoms are resolved is dramatically different. Phlebotomy provides rapid

remission of symptoms. Transfusions, on the other hand, may have to be repeated several times before the desired results are attained, and even then it may be days or weeks before symptoms completely disappear. For these reasons, we do not believe that phlebotomy warrants an evaluation equivalent to that assigned based on transfusions.

One commenter noted that hypertension and gout are common complications of polycythemia vera and suggested that in the note following the evaluation formula they be mentioned along with stroke and thrombotic disease as complications to be rated separately.

We agree and have included these additional conditions in the note following diagnostic code 7704, polycythemia vera.

One commenter, noting that the criteria for non-total ratings for thrombocytopenia under diagnostic code 7705 specify that there be no bleeding, suggested that the 100 percent evaluation be assigned during periods of active bleeding.

We agree and have revised the criteria for the 100 percent evaluation to require that there be active bleeding. When a patient with thrombocytopenia is actively bleeding, he or she would be under close medical supervision, unable to work and totally disabled. Requiring that there be active bleeding for the 100 percent evaluation level clearly separates the total evaluation from lower evaluations, which specifically require no bleeding.

One commenter suggested that there should be a total rating assigned for thrombocytopenia during an appropriate stabilization and observation period, with an examination to follow.

We do not concur. The periods of thrombocytopenic bleeding are relatively short, but require aggressive medical management. If the veteran requires prolonged hospitalization (over 21 days), a total evaluation would be assigned under the provisions of § 4.29. If medically indicated, a period of convalescence would be assigned under the provisions of § 4.30. Since an exacerbation of this severity is closely followed by a medical professional, records of observation and treatment which are normally available are adequate to evaluate any progression of the disease. If they are not, an examination would be requested.

One commenter stated that the convalescence periods for Hodgkin's disease, diagnostic code 7709, and non-Hodgkin's lymphoma, diagnostic code 7715, should not be reduced to six months.

The commenter appears to have misinterpreted the proposed rule to mean that a convalescent evaluation will be terminated six months after treatment has ceased. However, under the proposed change there cannot be a reduction at six months because the process of re-evaluation does not begin until that time. First, there must be a VA examination six months after completion of treatment. Then, if the results of that or any subsequent examination warrant a reduction in evaluation, the reduction will be implemented under the provisions of 38 CFR 3.105(e), which requires 60 days notice before VA reduces an evaluation and an additional 60 days notice before the reduced evaluation takes effect. The revision not only provides for a current examination to assure that all residuals are noted, but also offers the veteran more contemporaneous notice of any proposed action and expands the veteran's opportunity to present evidence shown that the proposed action should not be taken. In our judgment this method will better ensure that actual side-effects and recuperation times are taken into account because they will be noted on the required VA exam.

One commenter stated that the provisions for an examination six months after cessation of treatment as in Hodgkin's and non-Hodgkin's lymphoma should be applied under malignant neoplasms of the genitourinary system (code 7528) and the gynecological system (code 7627). The revisions of these systems have been made since this comment was received and the rating procedure of evaluating malignancies of these systems based on an examination six months following cessation of treatment was implemented.

We have made a number of editorial changes, primarily of syntax and punctuation, throughout the final rule. These changes are intended to clarify the rating criteria and represent no substantive amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 601(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

List of Subjects in 38 CFR Part 4

Persons with Disabilities, Pensions, Veterans.

Approved: June 13, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 is revised to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Section 4.117 is revised to read as follows:

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

	Rating
7700 Anemia, hypochromic-microcytic and megaloblastic, such as iron-deficiency and pernicious anemia:	
Hemoglobin 5gm/100ml or less, with findings such as high output congestive heart failure or dyspnea at rest	100
Hemoglobin 7gm/100ml or less, with findings such as dyspnea on mild exertion, cardiomegaly, tachycardia (100 to 120 beats per minute) or syncope (three episodes in the last six months)	70
Hemoglobin 8gm/100ml or less, with findings such as weakness, easy fatigability, headaches, lightheadedness, or shortness of breath	30
Hemoglobin 10gm/100ml or less with findings such as weakness, easy fatigability or headaches	10
Hemoglobin 10gm/100ml or less, asymptomatic	0

	Rating
Note: Evaluate complications of pernicious anemia, such as dementia or peripheral neuropathy, separately.	
7702 Agranulocytosis, acute:	
Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks	100
Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months	60
Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less than once every three months	30
Requiring continuous medication for control	10
Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7703 Leukemia:	
With active disease or during a treatment phase	100
Otherwise rate as anemia (code 7700) or aplastic anemia (code 7716), whichever would result in the greater benefit.	
Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no recurrence, rate on residuals.	
7704 Polycythemia vera:	
During periods of treatment with myelosuppressants and for three months following cessation of myelosuppressant therapy	100
Requiring phlebotomy	40
Stable, with or without continuous medication	10
Note: Rate complications such as hypertension, gout, stroke or thrombotic disease separately.	

	Rating
7705 Thrombocytopenia, primary, idiopathic or immune:	
Platelet count of less than 20,000, with active bleeding, requiring treatment with medication and transfusions	100
Platelet count between 20,000 and 70,000, not requiring treatment, without bleeding	70
Stable platelet count between 70,000 and 100,000, without bleeding	30
Stable platelet count of 100,000 or more, without bleeding	0
7706 Splenectomy	20
Note: Rate complications such as systemic infections with encapsulated bacteria separately.	
7707 Spleen, injury of, healed. Rate for any residuals.	
7709 Hodgkin's disease:	
With active disease or during a treatment phase	100
Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
7710 Adenitis, tuberculous, active or inactive. Rate under §§ 4.88c or 4.89 of this part, whichever is appropriate.	
7714 Sickle cell anemia:	
With repeated painful crises, occurring in skin, joints, bones or any major organs caused by hemolysis and sickling of red blood cells, with anemia, thrombosis and infarction, with symptoms precluding even light manual labor	100
With painful crises several times a year or with symptoms precluding other than light manual labor	60
Following repeated hemolytic sickling crises with continuing impairment of health	30
Asymptomatic, established case in remission, but with identifiable organ impairment	10
Note: Sickle cell trait alone, without a history of directly attributable pathological findings, is not a ratable disability. Cases of symptomatic sickle cell trait will be forwarded to the Director, Compensation and Pension Service, for consideration under § 3.321(b)(1) of this chapter.	

	Rating
7715 Non-Hodgkin's lymphoma:	
With active disease or during a treatment phase	100
Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be dtermined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
7716 Aplastic anemia:	
Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks	100
Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months	60
Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less than once every three months	30
Requiring continuous medication for control	10
Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.	

[FR Doc. 95–23515 Filed 9–21–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5300–4]

Ocean Dumping; Site Modifications and Site Dedesignation; Charleston, South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today modifies the designation of an Ocean Dredged Material Disposal Site (ODMDS) and dedesignates another ODMDS in the

Atlantic Ocean offshore Charleston, South Carolina. The modifications are to extend the period of use and to provide for improved management of the Charleston Harbor Deepening Project ODMDS. The dedesignation is for the smaller Charleston ODMDS. These actions are necessary to provide an environmentally acceptable ocean disposal site for projects in the Charleston area.

EFFECTIVE DATE: This final rule is effective on October 23, 1995.

ADDRESSES: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/347–1740 ext. 4287.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq*., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, Section 228.11) state that use of disposal sites may be modified.

The Charleston Harbor Deepening Project ODMDS was designated on August 3, 1987 along with a smaller Charleston ODMDS. A decision to designate a small site for permanent use at Charleston was based on projected future disposal volumes and the ease of monitoring. The larger Harbor Deepening Project site, which was the interim site, was designated for a seven-year period and restricted to use for Harbor Deepening material only. The smaller, permanent Charleston ODMDS lies within the boundaries of, and completely in the western portion of, the larger Charleston Harbor Deepening Project ODMDS. The sites are defined by the following coordinates:

Charleston Harbor Deepening Project ODMDS;
32°38′06″ N, 79°41′57″ W;
32°40′42″ N, 79°47′30″ W;
32°39′04″ N, 79°49′21″ W;
32°36′28″ N, 79°43′48″ W.

Charleston ODMDS;
32°40′27″ N, 79°47′22″ W;
32°39′04″ N, 79°44′25″ W;
32°38′07″ N, 79°45′03″ W;
32°39′30″ N, 79°48′00″ W.

Recent on-site investigations have revealed the presence of significant live bottom resources within and around both Charleston ODMDSs. These resources are located primarily in the western half of the smaller site and along the southern boundary of the larger site. While the effects of burial by dredged material disposal are apparent, the effects of nearby disposal (particularly of fine material) on these resources is yet to be determined. Ongoing studies are being conducted to determine whether recently disposed fine materials are impacting these resources. Until these studies are complete, further disposal of all fine material will be limited to the eastern portion of the Charleston Harbor Deepening Project ODMDS to prevent interference with these studies and to minimize further potential impacts.

On March 5, 1991 final rulemaking was issued to modify the Charleston Harbor Deepening ODMDS to allow non-harbor deepening projects access to this site. Since the smaller ODMDS was the only site available at that time for such projects, and the resources of concern were located within that site, it was determined that such a modification was necessary for continued disposal of Charleston Harbor area projects in an environmentally-acceptable manner.

In March 1993, the EPA and the Charleston District of the U.S. Army Corps of Engineers (COE) entered into an agreement concerning the management and monitoring of the Charleston Harbor Deepening ODMDS. This Site Management Plan (the Plan) was the result of partnering of the federal, state and local authorities who have an interest in ocean disposal and the protection of marine resources. The Site Management and Monitoring Team (the Team) jointly developed the Plan which outlines specific management and monitoring objectives for the Charleston ODMDS. The Team meets regularly to review the progress and results of monitoring and makes recommendations to EPA and the COE on the management and regulation of ocean disposal at the site. The current five year monitoring effort has entered its third year. Copies of the Plan, which is scheduled for review in 1997, may be obtained for review and comment from either the EPA regional office or the COE District office.

The Proposed Rule for these actions was published in the Federal Register on May 11, 1995 [60 FR 25192]. Only one letter of comment was received during the 45 day comment period. This letter was from the U.S. Department of the Interior and expressed their concerns that the live bottoms of interest went undetected during the site evaluation studies. The EPA acknowledges this concern and has reviewed the way in which these studies were approached in the late 1970's to avoid any repetition on future site evaluations.

B. EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites [39 FR 16186 (May 7, 1974)]. The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), Section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The continued use of the Charleston Harbor Deepening ODMDS is vital to the management goals of the Plan. The existence of natural resources within the smaller ODMDS, by itself, should preclude any further use of that site. By allowing the larger ODMDS to receive material on a continued basis, the need for the smaller ODMDS no longer exists, thereby allowing for disposal to occur in a more environmentally-acceptable location. In addition, disposal within the larger site will have to proceed in accordance with the Plan. Strict adherence to the disposal placement as specified in the Plan is necessary to prevent wasted monitoring efforts, which were designed based on the disposal of fine-grained materials within a specific location. Because monitoring results may cause management objectives to change, the Plan was designed so that appropriate changes could be made with the concurrence of EPA and the COE. EPA believes these changes do not warrant the preparation of an Environmental Impact Statement (EIS).

Once studies are complete, EPA may redefine the boundaries of the Charleston Harbor Deepening Project ODMDS through further rulemaking. Such rulemaking could modify disposal activities in the vicinity of the area's resources and reduce the potential for adverse impacts or allowing greater utilization of the site. EPA's primary concern is to provide an environmentally acceptable ocean disposal site for Charleston Harbor area dredging projects on a continued basis.

C. Site Modifications

The site modifications for the Charleston Harbor Deepening Project ODMDS are the extension of the period of use and to adjust certain restrictions on site use. The present period of use on the site is for seven years from the

initiation of the Charleston Harbor deepening project. EPA changes the period of use to 'continued use.' EPA also adds to the present restriction of site use the following language: 'and in accordance with all provisions of material placement as specified by the Site Management Plan.'

D. Site Dedesignation

The dedesignation of the smaller Charleston ODMDS is due to the presence of natural resources within its boundaries. Disposal of material within this site, particularly fine-grained materials, could directly and indirectly affect the survival of these resources. The modification on the larger ODMDS to allow for continued use will provide a suitable location for the disposal of all materials from the Charleston area that meet the ocean disposal criteria. Additionally, the boundaries of the smaller ODMDS lie totally within the larger ODMDS. Therefore, this action does not, at this time, actually remove any ocean bottom from potentially being used, if appropriate.

E. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the modifications and dedesignation will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a ''major'' rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

John H. Hankinson, Jr.,
Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraphs (h)(5) (v) and (vi) and by removing and reserving paragraph (h)(4) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(5) * * *

(v) Period of use: Continued use.

(vi) Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged materials, except entrance channel materials, shall be limited to that part of the site east of the line between coordinates 32°39′04″ N, 79°44′25″ W and 32°37′24″ N, 79°45′30″ W unless the material can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074 mm) by weight and shown to be suitable for ocean disposal. Additionally, all disposals shall be in accordance with all provisions of material placement as specified by the Site Management Plan.

* * * * *

[FR Doc. 95–23577 Filed 9–21–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5299–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Brown Wood Preserving Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Brown Wood Preserving Site (Site) in Live Oak, Suwannee County, Florida, from the National Priorities List (NPL). The NPL is codified as Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Florida (State) have determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that the remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Randall Chaffins, U.S. Environmental Protection Agency, Region IV, Waste Management Division, South Superfund Remedial Branch, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347–2643 ext. 6260.

SUPPLEMENTARY INFORMATION: The Brown Wood Preserving Superfund Site in Live Oak, Florida will be deleted from the NPL. A Notice of Intent to Delete this Site from the NPL was published in the Federal Register on July 6, 1995 (60 FR 35160). The closing date for comments on the Notice of Intent to Delete was August 7, 1995. EPA received no comments and therefore did not prepare a Responsiveness Summary.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Superfund.

Dated: September 5, 1995.

John H. Hankinson, Jr.,
Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site ''Brown Wood Preserving Site, Live Oak, Florida''.

[FR Doc. 95–23321 Filed 9–21–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 763

[OPPTS–62091A; FRL–4976–4)

Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements; Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision on requested waiver.

SUMMARY: EPA is issuing a final decision which approves the request of Utah for a waiver from the requirements of 40 CFR part 763, subpart E, Asbestos-Containing Materials in Schools.

ADDRESSES: A copy of the complete waiver application submitted by the State is available from the TSCA Nonconfidenital Information Center, TSCA Docket Receipt (7404), Office of Pollution Prevention and Toxics, Rm. NE–B607, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy is also on file and may be reviewed at the EPA Region 8 office in Denver, Colorado: EPA, Region 8 (8ART–RTI), 999 18th St., Denver, CO, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This action is issued under the authority of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2641, *et seq.* TSCA Title II was enacted as part of the Asbestos Hazard Emergency Response Act (AHERA), Pub. L. 99519. AHERA is the abbreviation commonly used to refer to the statutory authority for EPA's rules affecting asbestos in schools and will be used in this document. EPA issued a final rule in the Federal Register of October 30, 1987 (52 FR 41846), the ''Asbestos-Containing Materials in Schools Rule'' (the Schools Rule, 40 CFR part 763, subpart E), which requires all Local Education Agencies (LEAs) to identify asbestos-containing building materials (ACBMs) in their school buildings and to take appropriate actions to control the release of asbestos fibers.

Under section 203 of AHERA, EPA may, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, waive in whole or part the requirements of the Schools Rule, if the State has established and is implementing or intends to implement an ongoing program of asbestos inspection and management which is at least as stringent as the requirements of the rule. 40 CFR 763.98 sets forth the procedures to implement this statutory provision. The Schools Rule requires that specific information be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to States. The Agency encourages States to establish and manage their own school regulatory programs under the AHERA waiver program.

EPA issued a notice in the Federal Register of July 17, 1990 (55 FR 29069), which announced the receipt of a waiver request from the State of Utah, and solicited comments from the public. The notice also discussed the program elements of the State program.

No comments were received during the 60–day comment period. No request for a public hearing was received.

EPA is required to issue a notice in the Federal Register announcing its decision to grant or deny a request for waiver within 30 days after the close of the comment period. The comment period for this docket closed on September 17, 1990. The 30–day review period may be extended if mutually agreed upon by EPA and the State. EPA and Utah mutually agreed to extend the review period.

The remainder of this document is divided into two units. The first unit discusses the Utah program and sets forth the reasons and rationale for EPA's decision on the State's waiver request. Unit I. is subdivided into two sections. Section A discusses key elements of the State's program. Section B gives EPA's final approval of the waiver. The second unit of this document discusses statutory requirements of the Paperwork Reduction Act.

I. The Utah Program

A. Program Elements

The Utah Air Conservation Act, Title 26, Chapter 13 and implementing regulations (section 8, Utah Air Conservation Regulations) give the Utah Department of Environmental Quality (UDEQ) the authority to regulate asbestos in schools and commercial buildings. The State's regulations adopt by reference the AHERA regulations at 40 CFR part 763, subpart E effective when an AHERA waiver is approved by EPA. The State has the enforcement mechanism to allow it to implement the program. The State has EPA-approved Neutral Administrative Inspection Scheme (NAIS), logging system for tracking tips, complaints, etc., and an enforcement response policy in place. The State has qualified personnel to carry out the provision relating to the waiver. The program will be administered by the UDEQ, Bureau of Air Quality.

Since the State application for a waiver was received, EPA published a revision to its Asbestos Model Accreditation Plan (MAP). The Asbestos Model Accreditation Plan; Interim Final Rule was published on February 3, 1994 (59 FR 5236). This MAP required that each State adopt an accreditation plan that is at least as stringent as this MAP within 180 days after the commencement of the first regular session of the legislature of the State that is convened on or after April 4, 1994. The UDEQ submitted copies of the State's revised regulations. However, the State's regulations are not final at this time. Utah's revised regulations meet the requirements of the new MAP.

B. EPA's Decision on Utah's Request for Waiver

EPA grants the State of Utah a partial waiver from the requirements of 40 CFR part 763, subpart E, effective 30 days after publication of this Final Decision. This waiver includes all AHERA requirements except the MAP. EPA will amend the AHERA waiver to include the MAP when the State's MAP regulations become final. Federal jurisdiction shall be in effect in the period between the date of publication of this document and the effective date. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Utah. This waiver is applicable to all schools and public and commercial buildings covered by AHERA in the State and is subject to

rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i).

II. Other Statutory Requirements

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070–0091.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Asbestos in schools (AHERA), Hazardous substances, Reporting and recordkeeping requirements, State and local governments, Worker protection.

Dated: September 6, 1995.

Robert L. Duprey,

Acting Regional Administrator, Region 8.

[FR Doc. 95–23569 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91–35; FCC 95–374]

Operator Service Access and Payphone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On April 9, 1992, the Commission adopted a *Second Report and Order* prescribing an interim mechanism by which competitive payphone owners (''PPOs'') may collect compensation from certain interexchange carriers (''IXCs'') for originating interstate access code calls from their payphones. In the *Memorandum Opinion and Order on Reconsideration*, adopted August 17, 1993, the Commission substantially affirmed the *Second Report and Order*, although the Commission modified it in certain respects. Upon further reconsideration the Commission now affirms the *Reconsideration Order*, making one additional modification and a clarification with the intended effect of facilitating the payment of compensation by IXCs to PPOs. First, the Commission directs each PPO submitting an affidavit as verification of a compensation claim to include evidence that the particular payphone is owned by the PPO seeking compensation, and that the payphone was in working order during the period in question. Second, the Commission clarifies that IXCs to which the customer-owned coin-operated telephone (''COCOT'') lists are provided must pay local exchange carriers (''LECs'') reasonable charges for the costs of generating those lists. Third, the Commission rejects RCI's request that we exempt from compensation obligations those IXCs whose operator services consist of 1–800 and 950–10XX access code calls to preexisting accounts. The Commission also rejects RCI's request that we allow OSPs to remove themselves from the payphone compensation list at any time. Fourth, the Commission reverses our previous decision denying Allnet's request to be removed from the list of OSPs with payphone compensation obligations on the grounds that it is not a provider of ''operator services,'' a defined by the Telephone Operator Consumer Services Improvement Act.

EFFECTIVE DATE: October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Order

A. Affidavit Procedure for Payphones Not Appearing on COCOT Lists

Upon reconsideration of the requirement that PPOs must submit sufficient verification information to IXCs when their payphones do not appear on COCOT lists, the Commission affirms its conclusion that the affidavit procedure the Commission established in the *Reconsideration Order*, 58 FR 57748 (1993), provides PPOs a ''last resort'' procedure when other procedures and informal negotiations fail to resolve LEC COCOT list problems. The Commission further concludes, however, that additional information would assist the IXCs in verifying their compensation obligations for competitive payphones not appearing on LEC COCOT lists. Accordingly, the Commission directs each PPO submitting an affidavit to include evidence that a particular payphone is owned by the PPO seeking compensation, and that the payphone was in working order during the period in question. Such evidence of the payphone's operability should include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service. The Commission believes that the inclusion of such evidence will serve the interest of all parties by allowing IXCs to pay legitimate claims more quickly. The Commission also believes that the potentially significant penalties for the submission of fraudulent affidavits will continue to protect the IXCs against the misuse claims if good-faith negotiations between the relevant parties fail to resolve the dispute.

B. LEC Recovery of the Costs of Producing the COCOT Lists

The Commission articulates with more specificity what it held in the *Reconsideration Order*: that LECs may recover their reasonable costs in generating and producing the COCOT lists through direct charges to the IXCs that use them. The COCOT lists are produced exclusively to assist the IXCs in verifying their compensation obligations to PPOs. Because the COCOT lists are produced to assist the IXCs pursuant to FCC rules and are not included in state-tariffed payphone service, the Commission rejects MCI's argument that the lists are generated ''as a by-product of the provision of LEC payphone service to PPOs.'' Even if the IXCs choose not to receive the COCOT lists, they are still responsible for compensating PPOs for each eligible competitive payphone in the amount of $6 per month. In sum, the LEC COCOT lists are provided for the convenience of the IXCs, who, if requested, must pay the LECs a reasonable charge.

C. Certification Issues Raised by RCI's Petition for Clarification

Although it styles its pleading as a petition for clarification, RCI in effect requests reconsideration of the Commission's holding in both the Second Report and Order, 57 FR 21038 (1992), and the Reconsideration Order. As such, the Commission declines to adopt RCI's proposal for either expanding the scope of the exemption from the obligation to pay compensation to PPOs or modifying the terms of the affidavit procedure. The exemption from the compensation obligation is intended to apply to carriers that receive access code calls from their own presubscribed lines because such carriers already pay a commission to the PPO for such calls. The Commission emphasized that ''if the carrier receives *any* user-initiated access code calls from payphones on which it is not the presubscribed carrier, that carrier [will] be required to participate in the compensation mechanism.'' RCI proposes to expand this exemption significantly to include access code calls from non-presubscribed lines for which

the PPO would not receive compensation. The Commission concludes that this proposal is flatly inconsistent with the purpose of the narrow exemption and, accordingly, decline to adopt it.

RCI argues that its proposed modification would be consistent with TOCSIA, which exempts from the statute's consumer protection requirements interstate telephone calls that are answered by automatic equipment and completed only if the caller inputs a PIN. This argument relies upon a statutory exclusion that removes from the definition of ''operator services'' any calls that receive ''completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.''

The Commission has previously rejected an identical argument by RCI that calls placed to 800 and 950 numbers from non-presubscribed lines should be excluded from the payphone compensation provisions. In the *Second Report and Order,* the Commission explained that the exclusions incorporated into TOCSIA's definition of ''operator services'' applied to the branding requirements imposed on OSPs by Section 226(b), and served to limit those requirements to situations in which they were necessary. The Commission found that the text of the payphone compensation provisions, when read in conjunction with the legislative history, makes clear that Congress intended that the Commission consider the need to prescribe compensation for PPOs for access code calls. In addition, RCI petitions the Commission to exclude ''800'' and ''950'' calls from the definition of ''access code calls.'' RCI's request, however, amounts to an untimely petition for reconsideration of the *Second Report and Order.* As RCI acknowledges, the definition of ''access codes'', as set forth in the *Second Report and Order,* states that ''[a]ccess codes include 10XXX in equal access areas and ''950'' Feature Group B dialing * * * anywhere, where the three-digit XXX denotes a particular IXC. Some OSPs use an 800 number as an access code.'' The period within which parties were authorized to seek reconsideration of this decision expired many months ago. We, accordingly, decline to consider RCI's late-filed petition.

With regard to RCI's ''inconsistency'' argument that including ''800'' and ''950'' calls to OSPs within the definition of compensable ''access code calls'' would penalize OSPs for complying with the Commission's unblocking requirements, the Commission notes that it required OSPs to establish ''800'' and ''950'' access numbers as a means of permitting callers to reach the OSP whenever 10XXX calls were blocked from a particular competitive payphone. Thus, OSPs that are required to provide access from non-presubscribed payphones could do so through an access number, through 10XXX access, or through both. No matter how they provided access, these OSPs would be subject to the obligation to pay compensation to PPOs. In sum, because the Commission does not find any inconsistency between the definition of ''access code calls'' and the requirement that OSPs establish access numbers, the Commission declines to make the ''clarification'' requested by RCI.

The Commission also declines to modify the requirement that the certification must be made within 30 days after the public notice of the FCC staff report entitled ''Long Distance Market Shares.'' To permit IXCs to seek at any time an exemption from the obligation to pay compensation, as RCI suggests, would undermine the efficient operation of the compensation mechanism and significantly increase the associated administrative costs. More specifically, because a single exemption alters the amount of compensation due from each OSP, the Commission would be required to readjust on a continuous basis the proportionate share of the $6 per payphone per month due from each OSP subject to the compensation obligation. In addition, each OSP paying compensation, and each PPO seeking compensation, would be required to make corresponding changes to their respective payment and accounting operations. The costs of such ongoing changes for all parties, including the Commission, could be unduly burdensome. Accordingly, the Commission denies RCI's request.

D. Allnet's Request To Be Removed From List of IXCs Required to Pay Compensation to PPOs

Since Allnet filed its petition for reconsideration of the Commission's decision not to remove Allnet from the list of compensation payors, the Court of Appeals for the District of Columbia decided the *Florida Public Telecommunications* case. Although it does not directly address the issue of who is a ''provider of operator services,'' and it instead concerns an earlier Commission decision about the scope of compensable calls, *Florida Public Telecommunications* provides guidance on how the specific terms of TOCSIA are to be read in the context of the legislative purpose of that statute. As relevant to the statutory interpretation arguments advanced by Allnet, the rule of *Florida Public Communications* is that the plain meaning of the statutory language of TOCSIA must govern unless the Commission can show that Congress intended a different result.

While Allnet has always maintained that it was not a provider of ''operator services,'' as defined by TOCSIA, the Commission has answered in the past that Allnet is, however, a recipient of interstate access code calls originated by competitive payphones. Indeed, Allnet provides long-distance service to transient customers through 1–800 access numbers with billing to a preestablished account. This service clearly fits within the Commission's definition of compensable access code calls. Because TOCSIA is concerned with providing callers with access to the OSP of their choice, the Commission reasoned that a carrier that receives interstate access code calls should share the burden of paying compensation to PPOs for their origination. To this end, the Commission adopted a procedure in the *Reconsideration Order* whereby a carrier could certify that it did not receive *any* access code calls to be exempted from the obligation to pay compensation.

In applying the *Florida Public Telecommunications* guidelines for interpreting TOCSIA to the instant case, the Commission finds that even if a carrier receives interstate access code calls from competitive payphones, it must also be a provider of ''operator services,'' as defined by TOCSIA in Section 226(a)(7). If a carrier, such as Allnet, provides only the services that fall within the definition's exclusions, *e.g.,* ''with billing to an account previously established with the carrier by the consumer,'' and does not otherwise provide ''operator services,'' the Commission cannot require it to pay compensation under TOCSIA. Thus, under its rules and pursuant to TOCSIA, a carrier is not required to pay compensation under the interim flat-rate compensation mechanism, as established by the Commission's *Second Report and Order,* unless: (1) it receives access code calls; and (2) it is a provider of ''operator services.''

Based on Allnet's repeated statements that it does not provide ''operator services'' as defined by TOCSIA, the Commission finds that while it fits within the first part (''receives access code calls'') of this two-part test for compensation payors, Allnet does not meet the second part (''provides 'operator services' ''). Therefore, upon reconsideration, the Commission

removes Allnet from the list of compensation payors retroactive to the advent of the interim flat-rate compensation mechanism. The Commission does not expect that use of this two-part test will impact the status of any of the other carriers currently required to pay compensation. Because the Commission is removing Allnet from the list of carriers required to pay compensation to PPOs, it need not decide the other related issues raised by Allnet, such as whether it was given appropriate notice by the Commission that it was to be included among the compensation payors.

Ordering Clauses

Accordingly, pursuant to authority contained in Sections 1, 4, 201–205, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, and 226, It is Ordered that the policies, rules, and requirements set forth herein are ADOPTED.

It is Further Ordered that MCI's Petition for Further Reconsideration and Clarification of the *Reconsideration Order* is DENIED in part and GRANTED in part, as described herein.

It is Further Ordered that RCI's Petition for Clarification of the *Reconsideration Order* is Denied.

It is Further Ordered that the petition for reconsideration filed by Allnet is GRANTED in part, as described herein.

It is Further Ordered that this Memorandum Opinion and Order on Further Reconsideration will be effective October 23, 1995.

List of Subjects in 47 CFR Part 64

Communications common carriers, Operator service access, Payphone compensation, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendment to the Code of Federal Regulations

Title 47 of the CFR, Part 64, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201–4, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201–4, 218, 225, 226, 227, unless otherwise noted.

2. Section 64.1301 is amended by revising paragraph (f) to read as follows:

§ 64.1301 Competitive payphone compensation.

* * * * *

(f) A competitive payphone owner (PPO) that seeks compensation for competitive payphones that are not included on a LEC COCOT list satisfies its obligation to provide alternative reasonable verification to an IXC if it provides to that IXC:

(1) A notarized affidavit, signed by the president of the company, attesting that each of the payphones for which the PPO seeks compensation is a competitive payphone that was in working order as of the last day of the compensation period); and

(2) Corroborating evidence that each such payphone is owned by the PPO seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

[FR Doc. 95–23405 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–25; RM–7219]

Radio Broadcasting Services; Headland, AL, and Chattahoochee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 287C3 for Channel 287A at Chattahoochee, Florida, reallots Channel 287C3 from Chattahoochee to Headland, Alabama, and modifies the license for Station WUMG(FM) to specify Channel 287C3, Headland, Alabama, as its community of license, at the request of Chattahoochee Broadcast Associates. *See* 56 FR 07317, February 22, 1991. The allotment of Channel 287C3 to Headland, Alabama, will provide the community with its first local transmission service, in accordance with Section 1.420(i) of the Commission's Rules. Channel 287C3 can be allotted to Headland in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) southeast of the community in order to avoid a short-spacing to Station WOAB, Channel 285A, Ozark, Alabama. The coordinates for Channel 287C3 at Headland, Alabama, are North Latitude 31–16–19 and West Longitude 85–17–46. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 91–25, adopted September 8, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Headland, Channel 287C3.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Chattahoochee, Channel 287A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–23527 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–205; RM–8270]

Radio Broadcasting Services; Donalsonville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: Pursuant to petitions for reconsideration, the Commission amends the FM Table of Allotments to allot Channel 298A to Donalsonville, GA, and delete Channel 271A. The Commission determined that this would

be in the public interest in light of recent events. This represents a reconsideration of *Report and Order* in MM Docket No. 93–205, 8 FCC Rcd 8506 (1993), 58 Fed. Reg. 65132 (Dec. 13, 1993). The coordinates for channel 298A at Donalsonville are 30–59–07 and 84–53–12. There is a site restriction 6.5 kilometers south of the community.

DATES: Effective November 3, 1995. The window period for filing applications will open on November 3, 1995 and close on December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 739–0773.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket No. 93–205, adopted September 8, 1995 and released September 19, 1995. The full text of this decision is available for public inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S. C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202 (b), the Table of FM Allotments under Georgia, is amended by removing Channel 271A and adding Channel 298A at Donalsonville.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–23530 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 082495C]

Atlantic Shark Fisheries; Large Coastal Closure Notice

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic Shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period July 1 through December 31, 1995.

EFFECTIVE DATE: 2330 hours local time September 30, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347; Kevin B. Foster, 508–281–9260; or Michael Justen 813–893–3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by NMFS according to the fishery management plan (FMP) for Atlantic Sharks under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The second semiannual quota is available for harvest from July 1 through December 31, 1995.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period July 1 through December 31, 1995, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by September 30, 1995. During this closure, for vessels issued a permit under § 678.4, possession of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. However, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, off-loaded, and sold, traded, or bartered prior to September 30, 1995, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

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

Dated: September 18, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23499 Filed 9–18–95; 3:49 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 184
Friday, September 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–95–011]

Results of Soybean Producer Poll

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of poll results.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the results of a national poll among soybean producers and the elimination of refunds effective October 1, 1995.

DATES: Producers will not be entitled to refunds of assessments paid on soybeans sold on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp; Marketing Programs Branch; Livestock and Seed Division, AMS, USDA, Room 2606–S; P.O. Box 96456; Washington, DC 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act) (7 U.S.C. 6301 *et seq.*) the Department of Agriculture (USDA) conducted the required producer poll on Wednesday, July 26, 1995, among soybean producers to determine if the conduct of a refund referendum on the continuance of the payment of refunds was favored.

The Act requires USDA to conduct a refund referendum if at least 76,200—20 percent of the 381,000 producers nationwide (not in excess of one-fifth of which may be producers in any one State)—sign the poll.

The poll produced a total of 48,782 valid signatures. This total does not meet the requirement; therefore, the Secretary has determined based on the poll results that a refund referendum will not be conducted. As a result, producers will not be entitled to refunds of assessments paid on soybeans sold on or after October 1, 1995.

Dated: September 15, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–23554 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–24–93]

RIN 1545–AT75

Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements of section 417. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by December 20, 1995.

ADDRESSES: Send submissions to CC:DOM:CORP:T:R (EE–24–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:T:R (EE–24–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free number).

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 (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224. To ensure that comments on the collection of information may be given full consideration during the review by OMB, these comments should be received by December 20, 1995.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is in the provisions of §§ 1.411(a)–11(c)(2)(iii) and 1.417(e)–1(b)(3)(ii) that require the plan administrator to inform a participant that the participant has a right to at least 30 days to consider distribution options. Existing regulations implement the mandate of section 417(a)(3) that a qualified plan provide a written explanation of distribution options to each participant. Under existing regulations, a distribution cannot be made until 30 days after the explanation is provided. The provisions of this notice of proposed rulemaking give plans the flexibility to make a distribution within 30 days provided the participant is clearly informed of the right to at least 30 days for consideration of the distribution options. The IRS requires this information to be provided to participants to assure they have adequate time to evaluate their distribution options.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

The collection of information under this notice of proposed rulemaking can be satisfied by the addition of a statement to the explanation already provided by plan administrators to participants under existing regulations. Therefore, this collection of information results in a minor increase in an existing burden.

Estimated total annual reporting burden: 8333 hours. The estimated burden per respondent varies from 0 hours to 2 hours, depending on individual circumstances, with an estimated average of .011 hours.

Estimated number of respondents: 750,000.

Estimated annual frequency of responses: One time per year.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to section 411(a)(11) and section 417. The temporary regulations contain rules relating to the notice, consent, and election requirements of those sections.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has 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 Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.411(a)–11 is amended by:

1. Revising paragraphs (c)(2) (ii) and (iii).

2. Adding paragraphs (c)(2) (iv) and (v) and (c)(8).

The revisions and additions read as follows:

§ 1.411(a)–11 Restriction and valuation of distributions.

[The text of proposed paragraphs (c)(2)(ii) through (c)(2)(v) and (c)(8) are the same as the text of § 1.411(a)–11T published elsewhere in this issue of the Federal Register].

Par. 3. Section 1.417(e)–1 is amended by:

1. Revising paragraph (b)(3).

2. Adding paragraph (b)(4).

The revision and addition read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

[The text of proposed paragraphs (b) (3) and (4) is the same as the text of § 1.417(e)–1T published elsewhere in this issue of the Federal Register].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–23264 Filed 9–15–95; 4:00 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 94–023]

Port Access Routes: Approaches to Delaware Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard is publishing the results of a port access route study which evaluated the need for changes to the traffic separation scheme and precautionary area in the approaches to Delaware Bay. The study concluded that the eastern approach lanes of the traffic separation scheme should be adjusted and a two-way route for use by tug and tow traffic should be established to separate tug and tow traffic from large, inbound vessel traffic. The study also concluded that the precautionary area needed to be reconfigured to exclude shoal areas too shallow for deep draft vessels. However, the existing southeastern approach should remain as presently configured.

FOR FURTHER INFORMATION CONTACT: LCDR Tom Flynn, Project Officer, Fifth Coast Guard District at (804) 398–6285, or Margie G. Hegy, Project Manager, Coast Guard Headquarters at (202) 267–0415.

SUPPLEMENTARY INFORMATION: A report on the study addressed in this notice is available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593–0001, or at the Fifth Coast Guard District office, room 509, 431 Crawford Street, Portsmouth, VA 23704–5004, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

The Study

The Coast Guard has concluded its study of the vessel traffic separation scheme (TSS) and the precautionary area in the approaches to Delaware Bay which was announced in a notice published in the Federal Register on March 22, 1994 (59 FR 14126). The TSS is an internationally recognized routing measure intended to minimize the risk of collision by separating vessels into separate, opposing lanes of traffic. It consists of two parts and a precautionary area. The first part, or eastern approach, consists of westbound and eastbound traffic lanes, and a separation zone. The second part, or southeastern approach, consists of north-westbound and south-eastbound traffic lanes, and a separation zone.

Public Comments

The port access route study was opened primarily because of concerns, expressed by the Mariners Advisory Committee for the Bay and River Delaware, about near misses between deep-draft vessels and tugs with tows at Delaware Bay Entrance. Comments were received from vessel operators using the area, the Departments of Army,

Commerce, and Navy, and the Philadelphia Regional Port Authority.

The Coast Guard met with representatives of the Mariner's Advisory Committee for the Bay and River Delaware, the Pilots' Association for the Bay and River Delaware, and tug masters for Maritrans Towing on January 19, 1995, in Philadelphia, PA, to discuss the results of the study. They agreed that the proposed changes were needed and would improve the safety and efficiency of navigation at the Delaware Bay entrance.

Additionally, the Coast Guard discussed the results of the study at the regular meeting of the Mariner's Advisory Committee for the Bay and River Delaware held on March 9, 1995. The Committee agreed with the recommendations in this notice.

Findings and Conclusions

(a) Outbound tugs with tows routinely depart from Brandywine Channel, head on a southeasterly course past Delaware Bay Entrance Channel Lighted Buoy 8, and, in the vicinity of Delaware Bay Entrance Lighted Buoy 6, change course to a northeasterly heading. This course change occurs within the current precautionary area near the pilot area and frequently confuses operators of inbound, deep-draft vessels. Operators not familiar with the local towing practices are placed in what initially appears to be a crossing situation, then appears to be a collision situation, and then again appears to be a crossing situation. These situations occur before a pilot boards the vessel. The master of the inbound vessel must determine what options apply as the situation appears to change, while entering unfamiliar pilotage waters.

(b) The current configuration of the precautionary area includes numerous shoal areas to the north and east of the channel marked for use by deep-draft vessels. These shoals are charted and well marked with buoys. Only recreational, shallow-draft vessels can use these shoal areas. There is no navigational or safety need to include these shoals in the precautionary area.

(c) The total tonnage handled by the ports on the Delaware Bay and River between 1989 and 1992 increased 15.26 percent. The number of vessels calling on the Delaware Bay and River was at its highest in 1988 with 3,041 arrivals. The lowest number of arrivals was in 1993 with 2,579. There were 2,679 arrivals in 1994, which is an increase of 100 vessels over 1993. A trend for larger capacity vessels calling on the ports of the Delaware Bay and River is expected.

(d) The COE's Philadelphia Harbor to the Sea 45-Foot Channel Project, scheduled to begin in fiscal year 1997 and be complete in 2003, will allow access to the Delaware Bay and River by larger, deeper-draft, bulk and containerized, cargo vessels. Traffic projections indicate that an increase in the number of vessels entering and departing the Delaware Bay can be expected. The recommended changes to the TSS would allow for safer and more efficient navigation by all vessel traffic.

(e) The Delaware River Port Authority has implemented new marketing strategies to attract new customers to the region. This should result in an increase in traffic.

(f) There were 1,015 tug and tow transits of this area in 1994. Tug and tow traffic departing Delaware Bay and bound for New York, Boston, and other northeast ports tends to hug the deeper water south and east of the shoals located off Cape May, New Jersey. The eastbound track of the traditional tug route runs parallel with the westbound lane of the eastern approach (Five Fathom Bank to Cape Henlopen Traffic Lane) of the TSS. There have been several near misses and at least one collision (T/V FAITH I (BH)) between an inbound deep-draft vessel and a departing tug with tow. That collision resulted in a discharge of approximately 150,000 gallons of unleaded gasoline. A contributing factor was the position of Delaware Bay North Approach Lighted Bell Buoy 2 (LL 1475), which marks a shallow spot with a depth of 37 feet. This buoy is located in the middle of the western terminus of the Five Fathom Bank to Cape Henlopen Traffic Lane. The northern boundary of this lane, in conjunction with the position of Delaware Bay North Approach Lighted Bell Buoy 2 (LL 1475), is often confusing to inbound traffic. The buoy is red and, thus, intended to be passed to starboard by inbound vessels. However, due to the present location of the charted boundary line, inbound vessels often mistake the buoy for a safe water buoy. This confusing situation could be eliminated by rotating the west end of the northern boundary of the TSS clockwise to the position of Delaware Bay North Approach Lighted Bell Buoy 2 (LL 1475) which would serve to better separate tug and tow traffic from inbound seagoing vessels.

(g) During the course of this study, NOAA's National Ocean Service (NOS) conducted hydrographic surveys which included the area bound by the eastern approach, portions of the precautionary area, and portions of the southeastern approach. Results of the surveys have been incorporated into the most recent editions of the charts serving the Delaware Bay entrance. Formerly charted obstructions were investigated and were either proven to exist or disproved. New obstructions were investigated and charted if proven to be classified as a hazard or obstruction to navigation.

Recommendations

(1) The two lanes and the separation zone of the southeastern approach should remain unchanged.

(2) The western terminus of the eastern approach of the TSS where it joins the Precautionary area should be relocated as follows:

Part I: Eastern approach

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
38°46′18″ N	74°34′27″ W
38°46′20″ N	74°55′45″ W
38°47′27″ N	74°55′45″ W
38°47′21″ N	74°34′30″ W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
38°48′19″ N	74°55′18″ W
38°49′40″ N	74°36′45″ W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
38°45′27″ N	74°56′12″ W
38°44′27″ N	74°34′21″ W

(3) The boundaries of the precautionary area should be reconfigured as follows: From 38°42.8′ N, 74°58.9′ W; thence northerly by an arc of eight nautical miles centered at 38°48.9′ N, 75°05.6′ W to 38°47′27″ N, 74°55′18″ W; thence westerly to 38°47′30″ N, 75°01′48″ W; thence northerly to 38°50′45″ N, 75°03′24″ W; thence northeasterly to 38°51′16″ N, 75°02′50″ W; thence northerly to 38°52′12″ N, 75°01′48″ W; thence westerly by an arc of 6.8 nautical miles centered at 38°48.9′ N, 75°05.6′ W to 38°55′55″ N, 75°05′48″ W; thence southwesterly to 38°54′00″ N, 75°08′00″ W; thence southerly to 38°42.8′ N, 74°58.9′ W. Reconfiguring the precautionary area would remove areas that cannot be used by deep-draft vessels due to the naturally available water depths and more accurately reflects to the mariner where precaution should be exercised.

(4) Two-way traffic route should be established to better separate tug and

tow traffic from inbound large-vessel traffic in the eastern approach. The two-way traffic route should be bounded on the west and south by a line connecting the following geographical positions:

Latitude	*Longitude*
38°50′45″ N	75°03′24″ W
38°47′30″ N	75°01′48″ W
38°48′19″ N	74°55′18″ W
38°50′12″ N	74°49′44″ W
39°00′00″ N	74°40′14″ W

and, bounded on the east and north by a line connecting the following geographical positions:

Latitude	*Longitude*
30°00′00″ N	74°41′00″ W
38°50′29″ N	74°50′18″ W
38°48′48″ N	74°55′15″ W
38°48′20″ N	74°59′18″ W
38°49′06″ N	75°01′39″ W
38°51′16″ N	75°02′50″ W

(5) The sound signals on all buoys marking the TSS should be removed.

Datum: NAD 83.

The Coast Guard will initiate rulemaking and seek IMO approval to reconfigure the eastern approach and the precautionary area and establish a two-way traffic route recommended for use by tug and tow traffic available to all vessels with a draft that enables them to operate safely.

Dated: September 15, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–23519 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 265

[FRL–5301–3]

Hazardous Waste Management System; Testing and Monitoring Activities; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed rule (Update III of SW–846) that adds, revises, and deletes testing methods from SW–846 and from certain regulations for complying with the requirements of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976. The Proposed rule appeared in the Federal Register on July 25, 1995 (see 60 FR 37974). The extension of the comment period is needed because of packaging and shipping problems with the Proposed Update III document. The Government Printing Office plans to distribute new packages to those subscribers whose packages were damaged or lost. This extension will allow commenters an opportunity to review the Proposed Update III package and supply their comments to the Agency.

DATES: EPA will accept public comments on this proposed decision must be submitted on or before December 21, 1995.

ADDRESSES: The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The official record for this rulemaking (Docket No. F–95–WT3P–FFFFF) is located at the above address in Room M–2616, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must request material from the RCRA Docket, or they may make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW–846, as amended by Updates I, II, IIA, and IIB, and the proposed Update III are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number is 955–001–00000–1. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 920–9810; or, for hearing impaired, call TDD (800) 553–7672. For technical information, contact Kim Kirkland, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–4761.

SUPPLEMENTARY INFORMATION:

Background Summary

On July 24, 1995, EPA proposed to revise certain testing methods used in complying with the requirements of subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA also proposed to add several new testing methods that may be used in complying with the requirements of subtitle C of RCRA. These new and revised methods, designated as Update III, were proposed to be added to the Third Edition of the EPA-approved test methods manual ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. In addition, EPA proposed to delete several obsolete methods from SW–846 and the RCRA regulations. The comment period was to end on September 25, 1995. However, due to problems involving the distribution of the Proposed Update III package, the Agency has decided to extend the comment period to December 21, 1995.

Dated: September 15, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–23573 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 281

[FRL–5299–2]

Montana; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of State of Montana for Final Approval, Public Hearing and Public Comment Period.

SUMMARY: The State of Montana has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Montana application and has made the tentative decision that Montana's underground storage tank (UST) program satisfies all of the requirements necessary to qualify for final approval. Notably, the State of Montana's statute authorizes the issuance of regulations that are broader in scope than the Federal regulations. EPA intends to grant final approval to the State to operate its program in lieu of the Federal program. The State of Montana's application for final approval is available for public review and comment.

DATES: All comments on Montana's final approval application must be received by the close of business on October 23, 1995. The public hearing is tentatively scheduled for November 13, 1995.

ADDRESSES: Written comments should be sent to U.S. EPA, Attention: Kristine Knutson, DWR 10096, 301 South Park, Helena, Montana 59626–0096.

If the public hearing is held it will be at the Department of Health and Environmental Sciences, 2209 Phoenix Avenue, Helena, Montana, at 1 p.m.

Copies of Montana's final approval application are available during normal working days at the following addresses for inspection and copying: from 8 a.m.—5 p.m. at the Montana Department of Health and Environmental Sciences, 2209 Phoenix Avenue, Helena, Montana 59620–0901, phone: (406) 444–5970; and from 12 p.m.—4 p.m. at the U.S. EPA Region 8, Library, Suite 144, 999 18th Street, Denver, Colorado 80202, phone: (303) 294–7616.

FOR FURTHER INFORMATION CONTACT: Kristine Knutson, U.S. EPA, Region 8, Montana Office, DWR 10096, 301 South Park, Helena, Montana 59626–0096, phone: (406) 449–5414, extension 225.

PUBLIC HEARING: EPA has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing to EPA or calling the contact within 30 days of the date of publication of this notice, EPA will hold a hearing on the date given above in the **DATES** section. EPA will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval is granted by EPA if the Agency finds that the State program: (1) Is ''no less stringent'' than the Federal program in all seven elements, and includes notification requirements of section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (Section 9004(a), 42 U.S.C. 6991c(a)).

B. State of Montana

In April 1985, the State of Montana established authority through an amendment to the 1981 Montana Hazardous Waste Act to implement an underground storage tank program. The State changed the title of the Act to the Montana Hazardous Waste and Underground Storage Tank Act in April 1989, and further amended the Act in 1989 to expand rulemaking authority. Another amendment in 1993 provided the State with rulemaking authority to assess civil penalties.

The State submitted a draft application for state program approval in December 1992. Supplemental information was provided in January 1993. EPA reviewed and commented on the draft application and requested additional information to be included in the final application.

On February 22, 1995, Montana submitted an official application for final approval. Prior to its submission, Montana provided an opportunity for public notice and comment in the development of its underground storage tank program as required under § 281.50(b). EPA has reviewed Montana's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. Consequently, EPA intends to grant final approval to Montana to operate its program in lieu of the Federal program.

This tentative determination to approve the Montana UST program applies to all activities in Montana outside of ''Indian Country,'' as defined in 18 U.S.C. section 1151, including the following Indian reservations in the State of Montana:

1. Blackfeet;
2. Crow;
3. Flathead;
4. Fort Belknap;
5. Fort Peck;
6. Northern Cheyenne; and
7. Rocky Boys.

The Environmental Protection Agency retains all underground storage tank authority under RCRA which applies to Indian Country in Montana.

Before EPA would be able to approve the State of Montana UST program for any portion of ''Indian Country,'' the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a state to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority pursuant to applicable principles of Federal Indian Law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over ''Indian Country,'' and EPA is not satisfied that Montana has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of Montana choose to submit analysis with regard to its jurisdiction over all or part of ''Indian Country'' in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the Montana program for ''Indian Country,'' to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

In accordance with Section 9004 of RCRA 42 U.S.C. 6991c and 40 CFR 281.50(e), the Agency will accept written comments on EPA's tentative determination until October 23, 1995. Copies of Montana's application are available for inspection and copying at the locations indicated in the ''Addresses'' section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Montana. EPA expects to make a final decision on whether or not to approve Montana's program by December 21, 1995, and will give notice of it in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations in favor of Montana's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure,

Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6991c.

Dated: August 1, 1995.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 95–23574 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 95–144; FCC 95–389]

Filing of UHF Noise Figure Performance Measurements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this *Notice of Proposed Rulemaking* (*NPRM*), the Commission proposes to amend its rules regarding television receivers by eliminating the requirement that parties who manufacture, import, or market television receivers file reports concerning the UHF noise figure performance of recently-introduced models. The Commission believes this action will reduce the regulatory burden on manufacturers and importers of television receivers.

DATES: Comments must be filed on or before October 12, 1995. Reply comments must be filed on or before October 27, 1995.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kimberly Baum, Office of Engineering and Technology, (202) 776–1606.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM,* adopted September 5, 1995, and released September 12, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of NPRM

The Consumer Electronics Group of the Electronic Industries Association (''EIA/CEG'') filed a petition requesting that the Commission delete the requirements for the submission of UHF noise figure measurement data. In its petition, EIA/CEG stated that requiring the compilation and submittal of test data, after the receiver has been verified as compliant with the Commission's rules, is unnecessary and inconsistent with the verification procedure for equipment authorization. EIA/CEG maintained that past filings of UHF noise figures showed a high level of compliance with the rules, which demonstrates the industry's commitment to the quality of UHF television.

2. Accordingly, the Commission proposes to eliminate the requirement for submission of UHF noise figure performance measurement data now submitted to the FCC. All television receivers shipped in interstate commerce or imported into the United States for sale or resale to the public would remain subject to the 14 dB noise figure. Compliance with this requirement would be maintained through the verification process, such routine follow-on testing as the manufacturer or importer believes is necessary, and random sampling by the Commission. The Commission believes this action will reduce the regulatory burden on manufacturers and importers of television receivers. Reduction of administrative burden on manufacturers could potentially result in a reduction in price to the consumer and thus is in the public interest.

List of Subjects in 47 CFR Part 15

Communicaitons equipment, Radio.

(Authority: 47 U.S.C. 154(i), 302, 303(e), 303(f), 303r), 303(s).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23525 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–244; RM–8315; RM–8401]

Radio Broadcasting Services; Pike Road and Ramer, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies a petition filed on behalf of Fred R. Hughey (RM–8315) requesting the allotment of FM Channel 248A to Pike Road, Alabama, as that locality's first local aural transmission service, and also denies a mutually-exclusive proposal to allot FM Channel 248A to Ramer, Alabama, as that community's first local aural transmission service, as requested by A. J. Miller (RM–8401). The proposals are denied based upon each proponent's failure to demonstrate that either Pike Road or Ramer, Alabama, constitute *bona fide* ''communities'', as that term is defined for purposes of Section 307(b) of the Communications Act, for allotment objectives. *See* 58 FR 50313, September 27, 1993. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 93–244, adopted September 8, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–23529 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–147; RM–8694]

Radio Broadcasting Services; Meredosia, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Larry K. and Cathy M. Price to allot Channel 228A to Meredosia, Illinois, as the community's first local FM service. Channel 228A can be allotted to Meredosia in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) east, at coordinates 39–50–14 North Latitude and 90–32–24 West Longitude, to avoid a short-spacing to Station

KGRC, Channel 225C1, Hannibal, Missouri.

DATES: Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry K. and Cathy M. Price, WKXQ Radio, P.O. Box 196, 123 North Liberty Street, Rushville, Illinois 62681 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–147, adopted September 7, 1995, and released September 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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.

John A Karousos,

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

[FR Doc. 95–23526 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–148; RM–8693]

Radio Broadcasting Services; Big Sky, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by George Russell & Associates, Inc. proposing the allotment of Channel 283A to Big Sky, Montana, as that community's first local service. Channel 283A can be allotted to Big Sky without a site restriction at coordinates 45–16–03 and 111–18–04.

DATES: Comments must be filed on or before November 13, 1995, and reply comments on or before November 28, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian M. Madden, Deborah R. Coleman, Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–148, adopted September 8, 1994, and released September 19, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–23528 Filed 9–21–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 950915231–5231–01; I.D. 091495E]

RIN 0648–AI45

Privatization of In-plant Seafood Inspections and Related Services

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inquiry.

SUMMARY: NOAA announces that it will change the way it delivers in-plant seafood inspections and related services under the Agricultural Marketing Act of 1946 (the Act). Currently, these services are provided by NOAA employees on a fee-for-service basis which enables NOAA to fully recover the service costs. NOAA is considering that some of these services would no longer be provided directly by NOAA employees, but rather be offered by private parties. This document outlines the action NOAA contemplates to assure that the privatized program conducted under Federal oversight will be the full equivalent of the current program. NOAA is issuing this notice to inform the public of its ideas on restructuring the way it provides services under the Act; to describe the method by which it would assure continued availability of the benefits of these services through private inspectors certified by NOAA; and to invite submission of written recommendations and comments.

DATES: Comments must be received on or before November 21, 1995.

ADDRESSES: Director, Office of Industry Services, 1315 East-West Highway, Room 12553, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James W. Brennan, NOAA Deputy General Counsel at (202) 482–3044.

SUPPLEMENTARY INFORMATION: Comments should take into account the following criteria that will fundamentally affect the viability of a privatized inspection program: (i) Fair treatment of Government inspectors currently

providing the services; (ii) minimum modification of relationships with customers subscribing to the current program, and assurance that the internal operations of these customers need not be changed to accommodate a privatized system; (iii) continued recognition by foreign governments of official indicia as indicating safety, wholesomeness and acceptability of products to which the indicia are affixed or to which they relate; (iv) acceptance of the integrity of the privatized inspection program by harvesters, processors, wholesalers, retailers and consumers; and (v) likelihood of the continued economic viability of the private entity (or entities) providing the services into the indefinite future.

In furtherance of Administration efforts to ''reinvent'' and improve the way services are delivered to the public, and to comply with the personnel reductions mandated by the Federal Work Force Restructuring Act, NOAA is considering privatization of inspections and related services for fish and fishery products currently conducted under its voluntary fee-for-service program. By the end of FY 1996, NOAA would discontinue direct involvement by Federal employees in performing these services under authority of the Act (7 U.S.C. 1621 *et seq.*). However, NOAA will retain oversight to maintain public confidence in the continued integrity of the program. One or more qualified entities in the private sector would be officially recognized and authorized by NOAA to provide inspection services. NOAA would no longer conduct inspection services to be performed by Federal and cross-licensed State employees, but would certify the competence of each private entity authorized to provide these services to members of the public.

The current voluntary program has been a notable success. It promotes domestic and foreign commerce in American seafood in several important ways. It is a tool available to exporters to provide a known, reliable assurance that seafood exported from the United States to foreign markets conforms to the agreed contract specifications between the domestic exporter and the foreign purchaser. It provides a governmental assurance of the safety, wholesomeness, and acceptability to officials of other nations, thereby speeding customs clearance at foreign borders. In those countries that require certification from a Federal entity, NMFS certification has routinely satisfied these requirements. The program also serves domestic purchasers at the import, wholesale, retail or consumer level who desire assurance from a disinterested expert that fishery products in the market place meet appropriate standards, and fishery products that they have purchased meet their requirements. In addition, the official marks (e.g., U.S. Grade A, Packed Under Federal Inspection) associated with this program are often used in the trade and at retail to market the product to its best advantage and allow consumers to choose product of the desired quality. During 1994, the NOAA program inspected more than 984 million lb (446,000 mt) of fishery products for domestic and foreign use.

It is important to foreign governments, in particular, that the assurances conveyed by the voluntary fee-for-service activities under the Act are backed by a disinterested entity of unimpeachable integrity. During 1994, NOAA inspected and certified 156.4 million lb (70,900 mt) of fishery products for export. While the Federal Government may need to retain involvement in providing assurances to foreign governments, many of the services that NOAA currently provides can be assumed by qualified, knowledgeable and disinterested private inspectors, provided that NOAA retains the oversight necessary to foster public confidence in the system of private inspection and related services.

Private inspectors would be required to maintain complete records of their activities under the Act, which NOAA would review as it audits performance under the program. NOAA contemplates that it would charge certified entities a fee to cover the oversight, audit and certification costs.

Prior to privatization, NOAA would amend certain inspection and certification provisions to expand the fee-for-service activities that may be conducted under the Act by persons who are not Federal employees.

The simplest way to privatize these services would be to certify each private person who satisfies applicable qualification standards to perform services under the Act as a private inspector (subject to oversight of NOAA). This approach could result in such a large number of geographically dispersed, qualified inspection firms that the quality of NOAA's oversight would be impaired, thereby affecting the integrity of the system. Furthermore, the size of some firms conducting inspections could be so small that it would raise legitimate concerns that decisions of these firms could be subject to undue influence by a customer who provides a significant portion of their income. Such cases would adversely affect the perceived credibility of the private inspection program by members of the seafood industry, by consumers and by foreign governments. Such a course of action could also seriously disrupt ongoing activities of existing customers. For those reasons, NOAA has determined that this approach is so unacceptable to customers, consumers, and the domestic industry in general that it would be unworkable.

NOAA believes that a better approach would be the establishment of a private, employee-owned Corporation (the Corporation) that would acquire the program and operate it subject to the oversight of NOAA. NOAA employees currently performing these services could become employees of the Corporation if they so elected, and would acquire an ownership interest therein by means of an Employee Stock Ownership Plan (ESOP). Under this alternative, NOAA would terminate its inspection services and would eliminate its inspector positions soon after the Corporation is established. This option has four important advantages: (1) Current employees would be treated fairly, (2) customer relations would be fostered, (3) NOAA oversight would be simplified, and (4) the integrity of the program would be maintained. Because NOAA inspectors would be represented in the process of establishing the ESOP and would have a stake in the ownership of the Corporation, the morale and productivity of inspectors would likely be high. Furthermore, ongoing relationships with current customers would not be disrupted. NOAA would deal with one major certified entity, and perhaps a small number of reasonably sized competing entities. Oversight would be far less burdensome this way compared to dealing with a large number of small certified entities. Furthermore, the inspectors employed by the employee-owned Corporation, being former NOAA inspectors, would be familiar with the procedures that will govern the conduct of inspections by private inspectors. These inspectors would also understand the overriding importance of maintaining the integrity of the inspection process.

The ESOP proposal would require more preparatory work in legal/financial areas that are unfamiliar to NOAA, and would perhaps involve greater initial costs to the Government. However, once the infrastructure is in place, the transition should go smoothly and rapidly. The inspectors employed by the Corporation would be highly qualified, as noted above, and these former NOAA inspectors would fully appreciate the necessity for complete impartiality in performing their duties. They would also have a comprehensive knowledge

of the inspection manual used by NOAA that would continue as the standard reference to ensure consistency by all inspectors throughout the program.

NOAA is in the process of contracting for a study of the feasibility of establishing a new Corporation, owned in whole or part by an ESOP, to undertake inspection services. The contractor will be encouraged to seek the views of affected employees, current customers, other members of the seafood industry and consumers.

At this point, NOAA assumes that the study will conclude that the approach contemplated is feasible. However, if the study, discussions with affected or interested persons, or comments resulting from this notice indicate that the five criteria essential for the success of a privatized system are not likely to be met, NOAA will pursue other options. Any option likely to be successful will probably require legislation, and will therefore have to be pursued as a matter of urgency if the deadline of September 30, 1996, is to be met.

In addition to providing services under the Act, the possibility exists that the Corporation could also be authorized to conduct similar services on behalf of other Federal or state agencies engaged in seafood inspection or in quality inspection of other foods, provided suitable arrangements could be made with other interested agencies. This raises the following questions: How should the privatized program mesh with the mandatory seafood inspection program now being operated by the U.S. Food and Drug Administration: Currently, NOAA has memoranda of understanding with FDA which include inspection and research. FDA is converting its inspection regime to one that is based on the Hazard Analysis Critical Control Point (HACCP) principles. Should the Corporation conduct inspections that could qualify under FDA's mandatory program? If so, how should this work? Should consultative services that the Corporation conducts under the NOAA voluntary program include training and technical assistance to facilitate compliance with the FDA mandatory program, especially by small businesses?

In certain areas, NOAA utilizes cross-licensed state and Federal inspectors from the Department of Agriculture to provide inspection services. In order to enhance the success of the Corporation, work that is currently performed by these governmental bodies could be directed to the new Corporation. The Corporation may wish to continue to utilize state or Federal personnel. NOAA would have no objection to this as long as these individuals meet the qualification standards that will be maintained by NOAA. To facilitate this transition NOAA would recognize a cross-licensed state and Federal inspector who has demonstrated satisfactory performance during the last year in a specific inspection function(s) as a certified entity for such activity(ies) to provide the Corporation with the ability to use these individuals. Future certification of state and Federal employees would be dependent on meeting the previously stated qualification standards.

NOAA contemplates establishing or authorizing the establishment of additional service marks to inform consumers of the official assurances provided by certified private inspectors, to provide other information useful to consumers, and to encourage foreign governments to rely on those logos for the government-backed assurance of safety, wholesomeness and quality. For entry into a foreign country where a governmental certificate may be required as a condition of acceptance by the importing foreign government, NOAA would either countersign the certificate of compliance or retain responsibility for certification for specific countries. In the latter case, NOAA certification would be based upon inspections conducted by the Corporation acting under contract with NOAA. The oversight and standard-setting roles of NOAA could eventually be assumed by a government Corporation. However, in the context of an inspection program conducted by a certified private entity, that must be considered a long-range possibility, not a short-term or medium-term goal.

The Corporation itself would need to comply with practices and standards established by NOAA. Its employees conducting inspections and related services would also be required to meet appropriate standards of education, training, or experience established by NOAA. The major source of qualified employees would be the NOAA employees performing fee-for-service activities under the Act. NOAA currently has 168 inspectors providing inspection services. These inspectors are classified in two personnel series: (1) Consumer Safety Officer (GS-696) series—there are currently 131 NOAA field inspectors in this series (this is the same series as Food and Drug Administration Consumer Safety Officers); and (2) Consumer Safety Inspector (GS-1862)—there are currently 40 NOAA field inspectors in this series. The basic requirements for the two series are as follows:

(1) Consumer Safety Officer (entry level)

A. Bachelor's degree that includes at least 30 semester hours in one or a combination of the following: Biological sciences, chemistry, pharmacy, physical sciences, food technology, nutrition, medical science, engineering, epidemiology, veterinary medical science, or related scientific fields that provide knowledge directly related to consumer safety officer work, or

B. Combination of education and experience—courses consisting of at least 30 semester hours in the fields of study described in A, plus appropriate experience or additional education.

(2) Consumer Safety Inspector (lowest entry level)

A. Successful completion of 2 years of study, which includes at least 12 semester hours in any combination of courses such as those in the agricultural, biological, or physical sciences, food technology, epidemiology, home economics, pharmacy, engineering, or nutrition.

(3) Consumer Safety Inspector (above lowest entry level)

A. Successful completion of a 4-year course of study leading to a bachelor's degree with at least 24 semester hours in any combination of courses in subjects as listed under A; or

B. Specialized experience in work that has provided knowledge of the properties and characteristics of the commodities and substances regulated in the position to be filled, skill in applying proper techniques for collecting samples and performing field tests and examinations, skill in reporting both orally and in writing, and skill in maintaining effective personal contacts. Such experience may be acquired in work such as the following: Food inspector, public health inspector, and quality inspection specialist.

The qualifications of all persons applying for certification would be examined to assure that they meet minimal agency standards of competence. NOAA anticipates that any person who has successfully performed as a Federal Consumer Safety Officer or Consumer Safety Inspector for more than 1 year and has successfully completed the necessary training courses for the activities for which certification is requested would qualify to conduct like services under the program as a certified entity or as an employee of such entity. Periodic review of the qualifications of all certified inspectors, and attendance at approved training courses to keep

current with advances in the art will be required in order to maintain a current certification.

Although the Corporation currently contemplated by NOAA is likely to meet the criteria needed for authorization to provide privatized inspection services, it would not necessarily be the only authorized entity. Other entities could apply to the Secretary of Commerce for authorization, and if they meet applicable requirements, they would be authorized to conduct the services. However, as noted previously, it is assumed that authorization of entities employing a small number of employees would make the system unworkable. Therefore, NOAA contemplates that one of the authorization criteria would be that the applicant must employ a minimum number of certified inspectors, perhaps in the range of 50 to 60. Comments on the number of certified inspectors needed to qualify a firm would be particularly useful. Additionally, NOAA probably would require that an entity authorized under the program could not receive more than a fixed percentage of its annual income from performing these services for any one seafood processor or group of related seafood processors. And, of course, a certified entity could not inspect its own seafood as a Federally certified entity.

Initially, it is contemplated that the private inspectors conduct one or more of the following services under the Act:

- Sampling;
- Determination of essential characteristics;
- Determination of class, quality or condition; and
- Continuous in-plant inspection.

Under the changes contemplated, inspectors probably would not be certified initially to approve HACCP plans. Because of the inherent complexity in approving HACCP plans, the variety of the plans themselves, and the relative novelty of the application of HACCP to seafood quality programs, it is contemplated that approval of HACCP plans will not be delegated until the process of privatization has matured. Under currently approved HACCP plans, firms have assumed significant responsibilities for assuring the safety, wholesomeness and quality of their own products, subject to periodic audits by NOAA. This will continue whether NOAA or a certified entity is responsible for the audit. Monitoring of approved HACCP programs by qualified certified private inspectors is being considered. Even if it were decided that they would not initially oversee HACCP plans as a certified inspector under the Act, certified private inspectors could assist their customers in designing HACCP programs as a private consultation service in much the same manner as NOAA currently does. Comments on this point are particularly desired.

It is anticipated that functions such as specification and label approval, as well as training functions in specialized activities such as sensory evaluation, will initially be retained by NOAA. The performance of appeal inspections is also considered to be a function that must be retained by NOAA to resolve issues of conflict between a certified entity and a party that requests an inspection service. NOAA will maintain the development of voluntary grade standards, functions associated with agency and trade interests in international activities, and performance of laboratory analyses to ensure the integrity of the NOAA program.

NOAA's role in providing for-fee services not initially included would be reexamined as the program proceeds. Ultimately, it is envisioned that NOAA's role could diminish to the point that it would issue voluntary standards and audit the performance of private inspectors, and, as noted, even those functions may eventually be assigned to a government Corporation or even be privatized if the right vehicle for doing so could be designed.

At first glance, it would seem that the possibility of having a single private entity authorized to conduct most of the services on behalf of NOAA could raise concerns about inflated pricing unless NOAA regulated the prices that could be charged. NOAA does not contemplate doing that for several reasons. Subscription to the service is not mandated by law. Less than 25 percent of the seafood in the domestic market place is now covered by the program; that suggests that the majority of seafood producers find that the value of the current service as a marketing tool does not exceed the cost of participation. It is unlikely that the privatized service would be able to charge fees that significantly exceed fees for similar services under the current program.

NOAA is considering a variation to ease the transition to the privatized system. Under the variation, NOAA would continue existing contracts with customers to provide inspection services but would negotiate a contract with the Corporation to actually conduct these services as a subcontractor to NOAA. (The inspectors employed by the Corporation would likely be the very inspectors who provided the services as Government employees). NOAA would pay the Corporation for services provided and bill and receive payment from the customers. Contracts with new customers would be established between the Corporation and those customers as the need arises. Over the course of the 1-year transition period, the Corporation gradually would assume full responsibility for existing NOAA contracts, on a time schedule that would be mutually convenient to the customers and the Corporation. In addition to offering a phased process, fully transparent to existing customers, this approach may provide a contractual vehicle to allow the transfer of control to the Corporation of some NOAA property currently used by its inspectors. Comments on the desirability of the variation would be helpful.

Request for Comments and Views

Affected employees, domestic and foreign consumers, seafood harvesters, processors, traders, retailers, importers and exporters, as well as entities interested in qualifying as certified inspection entities, are invited to submit comments and suggestions on the points discussed above, or any related topic.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

This notice has been determined to be not significant for purposes of E.O. 12866.

Dated: September 15, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–23484 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 184
Friday, September 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–95–00–2]

Extension of Time for Submitting Nominations for Members of the National Organic Standards Board (NOSB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice—Extension of time for Filing Nominations for Membership on the NOSB.

SUMMARY: This notice extends the time for submission of nominations to fill positions on the NOSB. The time has been extended from August 31, 1995 to September 30, 1995. The terms of five members will expire in January 1996. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, now must be postmarked on or before September 30, 1995.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Staff Director, Transportation and Marketing Division, Room 2945 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–2704.

SUPPLEMENTARY INFORMATION: Prior documents with this notice: Nominations for Members of the National Organic Standards Board: Published August 7, 1995 (60 FR 40153).

Notice is hereby given that the time for making nominations is hereby extended from August 31, 1995 to September 30, 1995. This will allow additional time for submission of nominations. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

Nominations are sought for the positions of representatives of farmers/growers (2), consumer/public interest groups (2), and environmentalist. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an individual who represents public interest or consumer interest groups, or an expert in the area of environmental protection and resource conservation.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the clearance process that is required by the Secretary.

7 U.S.C. 6501 et seq.

Dated: September 19, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–23553 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–02–P

Economic Research Service

Essential Agricultural Uses and Volumetric Requirements—Natural Gas Policy Act; Coronet, Industries, Inc.

AGENCY: Office of Energy and New Uses (OENU), Economic Research Service.

ACTION: Notice.

SUMMARY: This notice advises the public that a request for an interpretation of the Essential Agricultural Uses and Requirements regulations at 7 CFR Part 2900 has been received from Coronet Industries, Inc. (''Coronet''), seeking that the Department of Agriculture classify all of Coronet's existing natural gas uses as Essential Agricultural Uses.

DATES: Written comments will be accepted with respect to Coronet's request, if received by October 12, 1995.

ADDRESSES: Copies of the request for interpretation from which confidential information has been deleted in accordance with 7 CFR 2901.4(a)(2) may be obtained from: Matthew M. Schreck, Curran, Corbett & Stiles, P.C., 800 Gessner, Suite 930, Houston, Texas 77024, Attorney for Coronet Industries, Inc.

FOR FURTHER INFORMATION CONTACT: Roger K. Conway, Director, Office of Energy and New Uses, Economic Research Service, United States Department of Agriculture, 1301 New York Avenue, NW., Room 1212, Washington, DC 20005–4788; telephone number: (202) 219–1941.

SUPPLEMENTARY INFORMATION: Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements for essential agricultural uses in order to meet the requirements of full food and fiber production. Under provisions of NGPA, FERC must approve natural gas curtailment plans that are implemented in the event of natural gas shortages. However, natural gas classified for essential agricultural uses is not subject to curtailment until all other uses except for Priority 1 (homes hospital, etc.) have been curtailed. FERC also has additional authorities to prevent curtailments as needed.

The Secretary of Agriculture has defined essential agricultural uses at 7 CFR part 2900. The administrative procedures for adjustments in natural gas curtailment priorities and volumetric requirements are set forth at 7 CFR part 2901. Today's notice is in response to a request by Coronet Industries, Inc. for an interpretation of volumetric requirements for its essential agricultural uses.

Coronet is a manufacturer of animal feed supplements with manufacturing facilities located in Plant City, Florida. Coronet's manufacturing process utilizes natural gas in both kilns and reactors. Coronet receives natural gas from a direct interconnection with Florida Gas Transmission Company (FGT), an interstate pipeline subject to FERC jurisdiction. Coronet has no alternative fuel capability at the plant.

A January 12, 1995, FERC settlement agreement FGT and its customers

required FGT to change from an end-use curtailment plan to a pro-rata curtailment by November 1, 1995. Only a portion of Coronet's natural gas use is currently classified as Priority 2, essential agricultural uses.

FGT's previous end-use curtailment plan interrupted service based on the end use of the natural gas in accordance with the NGPA priority categories. Consequently, Priorities 3 through 9 were curtailed in their entirety in their respective orders of priority before Priority 2 was curtailed. Under FGT's new pro-rata curtailment plan, only Priority 1 and Priority 2 will be considered exempt from curtailment. Any natural gas uses not included in Priority 1 or 2, depending on the magnitude of the shortage, will be curtailed on a pro-rata basis.

In response to the change in FGT's curtailment plan, Coronet reviewed its natural gas usage and determined that all of the natural gas it burns at its plant is utilized to manufacture animal feed supplements (SIC Category 2048). According to Coronet, the volume differential between Coronet's previous Priority 2 classification, and its current total natural gas consumption for which priority 2 classification is now sought is attributable to its increased gas consumption.

Done, at Washington, DC., this 14th day of September 1995.

Roger K. Conway,

Director.

[FR Doc. 95–23432 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–18–M

Essential Agricultural Uses and Volumetric Requirements—Natural Gas Policy Act; U.S. Agri-Chemicals Corp.

AGENCY: Office of Energy and New Uses (OENU), Economic Research Service.

ACTION: Notice.

SUMMARY: This notice advises the public that a request for an interpretation of the Essential Agricultural Uses and Requirements regulations at 7 CFR part 2900 has been received from U.S. Agri-Chemicals Corporation (''U.S. Agri-Chem''), seeking that the Department of Agriculture classify all of U.S. Agri-Chem existing natural gas uses as Essential Agricultural Uses.

DATES: Written comments will be accepted with respect to U.S. Agri-Chem's request, if received by October 12, 1995.

ADDRESSES: Copies of the request for interpretation from which confidential information has been deleted in accordance with 7 CFR 2901.4(a)(2) may be obtained from: Matthew M. Schreck, Curran, Corbett & Stiles, P.C., 800 Gessner, Suite 930, Houston, Texas 77024, Attorney for U.S. Agri-Chem.

FOR FURTHER INFORMATION CONTACT: Roger K. Conway, Director, Office of Energy and New Uses, Economic Research Service, United States Department of Agriculture, 1301 New York Avenue, NW., Room 1212, Washington, DC 20005–4788; telephone number: (202) 219–1941.

SUPPLEMENTARY INFORMATION: Section 401(c) of the Natural Gas Policy Act of 1978 (NGPA) requires the Secretary of Agriculture to determine the essential uses of natural gas, and to certify to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) the natural gas requirements for essential agricultural uses in order to meet the requirements of full food and fiber production. Under provisions of NGPA, FERC must approve natural gas curtailment plans that are implemented in the event of natural gas shortages. However, natural gas classified for essential agricultural uses is not subject to curtailment until all other uses except for Priority 1 (homes, hospitals, etc.) have been curtailed. FERC also has additional authorities to prevent curtailments as needed.

The Secretary of Agriculture has defined essential agricultural uses at 7 CFR part 2900. The administrative procedures for adjustments in natural gas curtailment priorities and volumetric requirements are set forth at 7 CFR part 2901. Today's notice is in response to a request by U.S. Agri-Chemicals Corporation for an interpretation of volumetric requirements for its essential agricultural uses.

U.S. Agri-Chem is a manufacturer of animal feed supplements with manufacturing facilities located in Plant City, Florida. U.S. Agri-Chem's manufacturing process utilizes natural gas in both kilns and reactors. U.S. Agri-Chem receives natural gas from a direct interconnection with Florida Gas Transmission Company (FGT), an interstate pipeline subject to FERC jurisdiction. U.S. Agri-Chem has no alternative fuel capability at the plant.

A January 12, 1995, FERC settlement agreement between FGT and its customers required FGT to change from an end-use curtailment plan to a pro-rata curtailment by November 1, 1995. Only a portion of U.S. Agri-Chem's natural gas use is currently classified as Priority 2, essential agricultural uses.

FGT's previous end-use curtailment plan interrupted service based on the end use of the natural gas in accordance with the NGPA priority categories. Consequently, Priorities 3 through 9 were curtailed in their entirety in their respective orders of priority before Priority 2 was curtailed. Under FGT's new pro-rata curtailment plan, only Priority 1 and Priority 2 will be considered exempt from curtailment. Any natural gas uses not included in Priority 1 or 2, depending on the magnitude of the shortage, will be curtailed on a pro-rata basis.

In response to the change in FGT's curtailment plan, U.S. Agri-Chem reviewed its natural gas usage and determined that all of the natural gas it burns at its plant is utilized to manufacture animal feed supplements (SIC Category 2048). According to U.S. Agri-Chem, the volume differential between U.S. Agri-Chem's previous Priority 2 classification, and its current total natural gas consumption for which Priority 2 classification is now sought is attributable to its increased gas consumption.

Done, at Washington, DC, this 14th day of September, 1995.

Roger W. Conway,

Director.

[FR Doc. 95–23517 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–18–M

Natural Resources Conservation Service

Omak Creek Watershed Project, Colville Indian Reservation, Washington

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Omak Creek Watershed Project, Colville Indian Reservation, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, natural Resources conservation Service, Rock Pointe Tower West 416 Boone Avenue, Suite 450, Spokane, Washington 99201, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, tribal or national impacts to the human environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The project purposes are watershed protection, fish and wildlife enhancement, and to improve the water quality. The planned works of improvement include developing resource management system plans with the Colville Confederated Tribe and individual land operators. Conservation practices include grazing management, riparian planting, creating fish passage, water developments, fencing, cultural resource plots, bioengineered streambank stabilization, critical area planting, range seeding, troughs and other land treatment practices.

With the adoption of this plan, Omak Creek could support the only anadromous fish run within the boundaries of the Colville Confederated Tribe's sovereign nation. Nearly 40 miles of Omak Creek and its tributaries may once again be available for summer steelhead and, potentially, chinook salmon. Treatment measures are proposed to additionally address habitat components necessary to restore salmonid habitat and to protect the watershed. Two major fish passage structures are proposed to provide access for salmonids to Omak Creek. Some treatment measures are planned to enhance and protect cultural resources. Both the physical and human environments were considered while developing the strategy for total watershed treatment.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: September 13, 1995.

Lynn A. Brown,

State Conservationist.

[FR Doc. 95–23501 Filed 9–21–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: High Seas Fishing Compliance Act.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 30 hours.

Number of Respondents: 60.

Avg Hours Per Response: 30 minutes.

Needs and Uses: An Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas was adopted by consensus by the United Nations Food and Agriculture Organization. The need for the Agreement evolved from the concern that vessels belonging to member nations of regional fisheries organizations were reflagging to non–member nations, in order to continue fishing in the management areas unconstrained by the rules affecting member nations. The primary tenet of the Agreement is the obligation of a nation to require specific authorization to fish on the high seas for vessels carrying its flag. The nation is also responsible for ensuring that its authorized vessels do not undermine conservation and management measures that have been adopted by global or regional fishery management organizations. This collection will establish a system of licensing, reporting and recordkeeping for U.S. flag vessels.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishing Capacity Reduction Program.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0289.

Type of Request: Revision of a currently approved collection.

Burden: 2,010 hours.

Number of Respondents: 1,050.

Avg Hours Per Response: Between 1 and 16 hours depending on the requirement.

Needs and Uses: This program seeks to reduce permanently the fishing capacity within Northeast fisheries. Applicants must provide information on vessel ownership, catch history, financial information, and a bid for the amount for which the applicant's Federal fishing permit will be surrendered. NOAA will use the information to select the vessels to be removed.

Affected Public: Businesses or other for–profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

Agency Form Number: None.

OMB Approval Number: 0648–0272.

Type of Request: Extension of a currently approved collection.

Burden: 18,845 hours.

Number of Respondents: 6,700.

Avg Hours Per Response: Ranges between 30 minutes and 4 hours depending on the requirement.

Needs and Uses: The Individual Fishing Quota (IFQ) program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. Collection of information is necessary to establish eligibility for quota shares, to obtain registered buyers permits, to track the transfer of quota shares and IFQs, and to report on various activities. The information is used to manage these fisheries.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Salmon Northwest Emergency Assistance Plan.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0288.

Type of Request: Revision of a currently approved collection.

Burden: 12,116 hours.

Number of Respondents: 3,611.

Avg Hours Per Response: Ranges between 2 and 40 hours depending on the requirement.

Needs and Uses: A Federal financial assistance program has been established

for fishermen in the Northwest who can document losses resulting from the resource disaster in the salmon fishery. Fishermen will be apply to apply for two short–term jobs programs or apply for participation in a fishing permit buy–back program.

Affected Public: Individuals, business or other for–profit organizations, not–for–profit institutions, state, local or tribal government.

Frequency: On occasion when funding is made available.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 13, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23578 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of the Census

Notice of Proposal To Submit an Information Collection to the Office of Management and Budget (OMB)

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-submission consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing information collections before they are submitted to OMB for review. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Census Bureau, within the Department of Commerce, is soliciting comments concerning its plans to submit the Annual Demographic Survey (ADS), which we conduct in conjunction with the March 1996 Current Population Survey (CPS), to OMB for review.

DATES: Submit written comments on or before (insert 60 days after publication date). If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Direct all written comments to Gerald Taché, Departmental Forms Clearance Officer, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or copies of the information collection instrument and survey procedures should be directed to Oscar Perez, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of the Census conducts the ADS in conjunction with the March 1996 CPS. The Bureau of the Census has conducted this supplement annually for over 40 years. It is authorized by Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9. The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

The work experience items provide a unique measure of the dynamic nature of the labor force as viewed over a one year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by persons, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ADS are used by social planners, economists, Government officials, and market researchers to gauge the economic well-being of the Nation as a whole, and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data for forecasting economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use March data to determine the effects of various economic forces such as inflation, recession, recovery, etc., and their differential effects on various population groups.

A prime statistic of interest is the classification of persons as being in poverty and how this measurement has changed over time for various groups. Researchers evaluate March income data not only to determine poverty levels but also to determine whether Government programs are reaching eligible households.

II. Current Actions

The March 1996 supplement instrument will consist of the same items that were included in the March 1995 instrument, with the following changes:

A. In the migration series, we are eliminating the 1995 questions that asked about migration five years ago. In 1996, the migration series will ask only about migration one year ago.

B. We are reformatting a number of income items to allow reporting the amounts' periodicity on a more detailed basis than strictly annual, and to ensure consistency with all other income items. In 1995, we reformatted selected income items in this manner, and they resulted in better income data. The items we are reformatting in 1996 include:

Item No.	Item description
Q48b	Self-employment earnings from longest job.
Q49B2	Other self-employment earnings.
Q49B3	Other farm income.
Q60A88	Veteran's benefits (this series collects income amounts for up to *two* sources).
Q58a	Survivor benefits (this series collects income amounts for up to *three* sources).
Q61b	Disability benefits (this series collects income amounts for up to *two* sources).
Q63A1 through Q63A3	Interest income.
Q64a	Dividend income.
Q65A1 through Q65A3	Rents, royalties, estates and trusts.
Q66b	Educational assistance.
Q73A1 and Q73A2	Other income.

C. We are making minor wording changes in a few items; for example:

1. Changed the wording (for all periodicity-based income questions) from ''biweekly'' to ''every other week,'' and ''twice monthly'' to ''twice a month.''

2. Changed the statement for Item Q63c (interest income) to ''Only include

interest received from U.S. Savings Bonds cashed during 1995.''

D. We are deleting some items based on suggestions from interviewers and other staff. These items are CHK50A, Q50b, and Q50b-add (additional farm income series).

E. We are adding some items based on suggestions from data users:

1. We will identify persons covered by AFDC and food stamps.

2. We will collect eligibility reasons for receipt of Social Security and/or Social Security Income.

3. We will add a question that will identify child recipients of Social Security and Social Security Income.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in Item II. The following general guidelines are provided to assist in the preparation of responses. Please include the name of this information collection, the Annual Demographic Survey, in your comments.

As a potential data user:

A. Have you ever used the Annual Demographic Survey data from the CPS?

B. If so, will any of the proposed changes described in Section II adversely affect your analyses? If yes, please explain.

C. In general, do you agree or disagree that the modifications listed in Section II should be adopted? Please be specific.

D. As a user of these data, can you suggest modifications to the proposed items that, if incorporated, would better serve your analytical needs? If so, please submit your suggested changes with a short statement describing the perceived benefits.

As a potential respondent:

A. We estimate that it will take the average respondent about 25 minutes to answer the appropriate questions. Is this a reasonable burden?

B. Are the questions sensitive in nature? If so, please be specific in describing why.

C. Are the questions understandable and framed in a sensible manner? If not, what items are confusing and how should we clarify them?

D. In your opinion, could a proxy respondent (i.e., one household member providing information for another household member) provide complete and accurate answers? If not, why?

E. Do you have any suggestions on ways of reducing the burden associated with responding to this information collection?

The Census Bureau is also interested in receiving comments from persons regarding their views on the need for this information collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 18, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–23524 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–07–P

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 08/16/95–09/15/95

Firm name	Address	Date petition accepted	Product
Aco Enterprises, Inc	395 East 300 North, Morgan, UT 84050.	09/15/95	Bicycle packs and sports bags.
Bonnell Mfg. Co., Inc	Church Rd. & Roland Ave., Mt. Laurel, NJ 08054.	08/18/95	Bridesmaid, brides, and flower girl dresses.
Circuit Concepts, Inc	14201 58th Street North, Clearwater, FL 34620.	08/21/95	Printed circuit boards.
Co-Nect-It Frame Corp. DBA Mid-America Chops.	1100 S.E. Rice Road, Topeka, KS 66607.	09/05/95	Wood molding to create picture frames and picture frame kits.
Creighton Shirtmakers, Inc	P.O. Box 1797, 112 Industrial Dr., Reidsville, NC 27320.	09/13/95	Ladies' skirts and slacks and men's slacks and shirts.
Depoe Bay Fish Company, Inc	617 Southwest Bay Boulevard, Newport, OR 97365.	09/15/95	Fish fillets and shrimp.
Don-Lin Jewelry Co., Inc	39 Haskins St., Providence, RI 02903.	08/21/95	Costume jewelry.
Lexington United Corporation DBA Nat'L Plastics.	P.O. Box 568, 305 Industrial Ave., Port Gibson, MS 39150.	08/31/95	Dinnerware.
Metropolitan Flags Mfg. Corp. DBA Metro Flags, Inc.	47 Bassett Highway, Dover, NJ 07801.	08/31/95	Flags, wall banners, emblems, and insignias.
Nasco Industries, Inc	3 N.E. 21st Street, Washington, IN 47501.	09/11/95	Unisex jackets, coats, coveralls, overalls, hoods and aprons of man-made fibers coated with rubber.
New York Hardboard & Plywood Corp.	129 30th Street, Brooklyn, NY 11232.	09/05/95	Wood Furniture.
The Frame Company	33 Hope Street, Jersey City, NJ 07307.	08/24/95	Picture frames.
Thermo Tech, Inc	287 South Santa Fe Drive, Denver, CO 80223.	09/13/95	Stainless steel silicone connectors and food and dairy process hoses.
United Knitting, Inc	P.O. Box 3748, 310 Industrial Dr., Cleveland, TN 37320–3748.	09/14/95	Circular knit fabrics.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United states of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 18, 1995.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 95–23523 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On April 20, 1995, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, (HFHTs) from the People's Republic of China (PRC). The reviews cover two exporters of the subject merchandise to the United States and the period February 1, 1992, through January 31, 1993. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of reviews.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 1995, the Department published in the Federal Register (60 FR 19723) the preliminary results of the administrative reviews of the antidumping duty orders on HFHTs from the PRC (56 FR 6622, February 19, 1991). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of These Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg. (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars and wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

These reviews cover two exporters of HFHTs from the PRC, Fujian Machinery & Equipment Import & Export Corporation (FMEC) and Shandong Machinery Import & Export Corporation (SMC). The review period is February 1, 1992, through January 31, 1993.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received joint comments from FMEC, SMC, and Olympia Industrial Inc., an importer of the subject merchandise, (together, respondents), and rebuttal comments from Woodings-Verona Tool Works, Inc., petitioner. At the request of FMEC, SMC, and petitioner, a hearing was held on June 7, 1995.

Comment 1: Respondents argue that the Indian import statistics for the period April-December 1992, which the Department used to value direct materials and packing materials for the preliminary results of these reviews, are aberrational and should largely be rejected. Respondents contend that the aberrations in the surrogate values result from the fact that basket categories were used to value the factor inputs, that the imports sometimes reflected small import quantities, and that the import statistics have deviant values. They argue that other sources for surrogate values should be considered.

According to respondents, although the Department's first choice for publicly available published information (PAPI) is import statistics, as import prices theoretically represent the price paid by producers in the surrogate country, the Department has in past cases abandoned its reliance on import statistics and PAPI from the primary surrogate country when they are aberrational and do not fairly represent the market value of the input. They cite to the Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China (60 FR 22544, May 8, 1995) (Furfuryl Alcohol), the Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR

22359, May 5, 1995) (Lighters), the Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994) (Coumarin), the Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994) (Silicon Carbide), the Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China (59 FR 58818, November 15, 1994) (Saccharin), and the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China (59 FR 55625, November 8, 1994) (Pencils). Respondents contend that, in each of these cases, the Department determined that the import values in the surrogate country for certain inputs could not be used because the import values were aberrational, *i.e.*, too high, when compared to other sources of market value, or because the quantity imported was small, and used another source of data to determine the surrogate value, such as export statistics or price quotations in the surrogate country.

Respondents argue that the Indian import statistics should not be used for several reasons. First, respondents argue that the use of import statistics from the period April-December 1992 is arbitrary and unfair because the statistics were published in September 1993 and therefore not available at the time the merchandise was sold or the reviews requested. As a result, respondents complain that the exporters and importers did not have any knowledge of or control over the values which would be used to determine the margins.

Second, respondents note that the Indian import statistics do not reflect data for the period January-March 1992 and that the Department did not make an adjustment to the data to cover that period. Respondents argue that, since a significant percentage of the production of HFHTs took place outside of the period covered by the Indian import statistics, and all production of picks sold by FMEC took place in 1991, the Department should use the 1991 Indian import statistics and carry the figures forward to reflect the appropriate period, if it decides the Indian import statistics should be used as the surrogate values. According to respondents, the 1991 statistics should be adjusted forward, rather than adjusting the 1992 data backwards, since it is impossible to relate future imports to past periods.

Third, respondents argue that including data from December 1992 does not reflect the production of HFHTs. They contend that, since production time is 30–45 days and purchases of raw materials are made before production, raw materials for shipments made at the end of December 1992 would need to be purchased no later than November 1992.

Next, respondents contend that the Department's assumption that imports occur at prices equal to or just below those in the domestic market does not apply to low-value factors. According to respondents, since India is a major producer of steel and other HFHT input factors, it is more reasonable to assume that India's imports represent those products which India does not make, such as specialty steels or expensive types of wood. As a result, respondents argue, the basket categories which were used to determine the surrogate values and which cover a broad range of products, rather than the basic input factors used to produce and pack HFHTs, are biased toward higher values.

Respondents also argue that Yugoslavia was erroneously excluded from several Indian import categories on the basis that it is a non-market-economy (NME) country. They cite to Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Republic of Romania; Final Results of Antidumping Duty Administrative Review (56 FR 1169, January 11, 1991) as evidence that the Department considers Yugoslavia to be a market-economy country, and contend that, if Indian import prices are used for the final results, imports from Yugoslavia should be included in the calculation.

Last, respondents state that the 1992 Indian import statistics the Department used for the preliminary results do not show the month in which the imports were made (they note that the December import statistics are separately reported). Therefore, respondents contend, all of the imports could have taken place in November and December, and they argue that the potential that imports could be grouped in a few months should cause the Department to disregard those values particularly when the import quantities are small.

Respondents argue that the surrogate values for the following factor inputs are aberrational and should be disregarded, and that other surrogate values, particularly Indian export statistics, should be used: steel, steel pellets, wood for handles, detergent, resin glue, paint, varnish, dilution (paint thinner), anti-rust oil, wood for pallets, nails, cartons, iron straps, plastic straps, synthetic fiber, plastic bags, anti-rust paper, anti-damp paper, iron wire, iron buttons, and iron knots. They argue that these values are aberrational as a result of the change in the average import value between 1991 and 1992, the differences between the export and the import figures, and the range in quantities and values of imports from various countries.

Petitioner responds that use of Indian import statistics is reasonable and conforms to long-standing Department practice. It notes that FMEC and SMC suggested the use of Indian import statistics for a variety of factors of production, including steel, prior to the issuance of the preliminary results of reviews.

Petitioner contends that the Department should continue to exclude Yugoslavia from its calculation of the average Indian import price. It states that it is unclear whether the newly independent states of Croatia, Slovenia, and Bosnia-Herzegovina, which were recognized by the United States and the European Community in April 1992, were market oriented during the period of review.

Department's Position: As discussed in the Final Determination of Sales at less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China (57 FR 21058, May 18, 1992) (Pipe Fittings), the Department relies on PAPI for surrogate values. In determining the most appropriate PAPI to use, the Department prefers import data in the selected surrogate country over export data because import prices more closely reflect the market price of that factor in the surrogate country. See our response to comment 15 in the Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China (58 FR 48833, September 20, 1993) (Lock Washers), in which we state that any system of priorities in the selection of surrogate values should result in the use of import statistics when they are available, and Pencils, in which the PAPI selected were average non-export values.

Prior to the issuance of the preliminary results of these reviews, FMEC and SMC suggested the use of Indian import statistics for a number of direct inputs and packing materials. They did not suggest any other sources of surrogate values for direct inputs or packing materials, with the exception of prices for specific imported material inputs. Petitioner submitted a price quotation in India as a surrogate value for steel, but did not provide any other surrogate values for direct inputs or packing materials. The Department selected, for the preliminary results, the HTS categories recommended by FMEC

and SMC for certain inputs, including steel, and used Indian import statistics to value all inputs used to produce the subject merchandise, as well as all packing materials. In its case brief, respondents submitted new PAPI, which we returned to the respondents as untimely filed.

We agree with respondents that prices which are aberrational should not be used to value the factors of production, and we have in past cases, such as Saccharin, turned to sources other than import statistics from the selected surrogate country when certain surrogate values have been found to be aberrational. Therefore, for these final results, where we have other sources of market value such as Indonesian import statistics or U.S. import statistics, we have compared the Indian import statistics to these sources of market value to determine whether the Indian import values are aberrational, *i.e.*, too high or too low. We have also compared the average import values to other sources of market values if the total quantity imported under a specific category was small, and, if the value was found to be aberrational, *i.e.*, too high or too low, we have chosen another surrogate value.

For these final results, we have continued to use Indian import statistics for all direct inputs and packing materials, except for the iron wire, and we have selected the basket categories which most closely correspond to the inputs being valued. For certain factors, we have chosen a different HTS category than was used for the preliminary results. For iron wire, we have found that the Indian import statistics are aberrational, and have used Indonesian import statistics for the surrogate values for this factor. Specific factor inputs are discussed in the following comments.

With respect to respondents' complaint that the ranges of quantities and values of imports into India result in aberrational values, we note that imports into any country will reflect imports from a variety of countries in varying quantities and with varying prices. This does not mean that the average value derived from those imports is aberrational. Moreover, there is no basis for rejecting import values simply because the values are too high or too low. See Lock Washers. Therefore, we have used the Indian import statistics unless we have found that the values are aberrational by comparison to other sources of market value. However, where the quantity imported from a specific country was insignificant, we have eliminated imports from that country from the calculation of the surrogate value.

We disagree with respondents' arguments that use of import statistics from the April-December 1992 period is unfair because they were not available when the merchandise was sold or the reviews requested. It is the Department's standard practice to use surrogate values from a time period which is contemporaneous to the period of investigation or the period of review. See, *e.g.*, Furfuryl Alcohol, in which the surrogate value for furfuryl was selected because it was more contemporaneous than other sources, and the Preliminary Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China (60 FR 31282, June 14, 1995), in which surrogate values within the period of investigation, or most contemporaneous with the period of investigation, were selected.

With respect to respondents' arguments that the surrogate values do not reflect the period January–March 1992 and were not adjusted to reflect that period, and that production of the subject merchandise took place prior to the period covered by the import statistics, we have changed our calculations for the final results to use 1991 surrogate values for production which occurred in 1991, and 1992 surrogate values for production which occurred in 1992.

With regard to respondents' argument that data from December 1992 does not reflect the production of HFHTs, we note that the period of review covers the period through January 1993. Therefore, for shipments which occurred in the last month of the period, raw materials purchases could have taken place in December 1992, since the average production time is 30–45 days. It is thus appropriate to include imports in this month in the calculation of the surrogate values. In the event that there might not have been shipments during January 1993, it would still be appropriate to include statistics from December 1992 since that month is in the period of review.

The Department has consistently used basket categories under the HTS to value factor inputs. In Pipe Fittings, we state that basket import statistics that closely correspond to the factor input more accurately reflect the market price of that factor than other sources of surrogate data. In these reviews, there is no information on the record regarding more specific sources of surrogate values, with the exception of the prices of imported materials from market economy countries for specific factors. We have discussed the use of import prices in comments 2 and 8 below. Further, there is no evidence on the record to indicate that any of the factors being valued are of low value compared to other items in the basket categories, thus biasing the statistics toward higher values. The Department has selected the HTS categories which most closely represent the factors being valued, and, for certain factors, has selected HTS categories other than those selected in the preliminary results, as discussed in the following comments.

We agree with respondents that imports from Yugoslavia should not have been excluded from the calculation of the surrogate values since Yugoslavia has been treated as a market economy country in past investigations and reviews. Therefore, for these final results, we have included imports from Yugoslavia in our calculations of the surrogate values.

We disagree with respondents that the potential that imports could be grouped in a few months should cause the Department to disregard certain import statistics. When it uses import statistics, the Department bases the surrogate values on imports over a certain period, and does not perform an analysis of when those imports occurred. However, we agree with respondents' concern about small import quantities, and have, when the import volume is small, compared the import value to other sources of surrogate values to determine whether the value is aberrational.

Comment 2: Respondents argue that the import statistics used to determine the surrogate value for steel do not provide a statistically valid basis on which to calculate an average value because of the small quantity of imports during the time period. According to respondents, the small quantity of steel imported for that HTS category, 7213.49.09, makes the statistics vulnerable to distortion because a shift of the product mix within the HTS category could have a dramatic effect on the per-unit calculations. Moreover, respondents contend that the Indian import statistics for this category have experienced tremendous shifts over different periods, resulting in significant changes in the average value between 1991 and 1992 and demonstrating that the average values are unreliable and aberrational. They note that the average import value in 1991 was less than half the average import value in 1992.

Furthermore, respondents contend that there is a huge disparity between the Indian import and export statistics for steel, stating that a comparison between the import and export prices shows that the import statistics are aberrational.

Instead of the Indian import statistics, respondents have suggested the following alternative surrogate values which they claim fall within a range of prices which are reasonably comparable with each other: the prices of imported steel used by the HFHT factories, Indian export values, Indonesian export values, world steel prices (such as Japanese export prices to the PRC), and lastly, if the Department continues to use Indian import statistics to value steel, Indian imports of HTS category 7214.50, which respondents claim is the HTS category best covering the steel used to produce HFHTs.

Petitioner notes that, in their supplemental questionnaire responses, FMEC and SMC urged the use of steel import values, and contends that they are now attempting to pick the best surrogate values from around the world. Petitioner argues that the official Indian import statistics for steel are reasonable, and that the data submitted by petitioner on actual steel prices for the specific type and grade of steel used for manufacturing HFHTs closely correspond to the import values. Petitioner cites to Coumarin, where the Department noted its strong preference for using surrogate country import statistics as the best PAPI, despite the fact that, in that case, the Department rejected import statistics in favor of more specific and reliable price quotations. Petitioner notes that, in this case, the Indian import prices used by the Department in the preliminary results are consistent with the price quotations submitted by petitioner to the record of these reviews, covering the specific categories of steel used to produce HFHTs. According to petitioner, these price quotations are the next best surrogate data after the Indian import statistics.

Petitioner contends that all other possible surrogate values offered by respondents should be rejected. Petitioner argues that the import prices should not be used because there was no evidence on the record regarding which products were produced from imported steel and which were produced from domestically-produced steel. Moreover, it notes that only one factory used imported steel in its production. Also, according to petitioner, Indian export values are unreliable because they do not represent home market consumption in India and the vast majority of these exports are to countries not at a level of economic development comparable to the PRC. Petitioner also argues that Indonesian export prices should be rejected as Indonesia is the last of the five countries selected by the Department as possible surrogate countries. Petitioner rejects the use of world market prices as reported in the American Metal Market, arguing that the prices contained therein vary significantly by grade and type and, therefore, have no relation to the type of steel used to produce HFHTs. Petitioner also rejects the use of Japanese prices. Finally, petitioner argues that the Department used the proper tariff heading, HTS category 7213.49.09, in valuing steel, and that the HTS category suggested by respondents, 7214.50, is incorrect because it includes bars already forged, noting that respondents perform the forging in the production of HFHTs. Petitioner states that there is no evidence to show that HTS category 7213.49.09 covers steel in wound coil form which is more expensive than the bar steel used to produce HFHTs.

Department's Position: For the preliminary results of reviews, we used HTS category 7213.49.09, bars and rods containing more than 0.25 percent but less than 0.60 percent carbon in wound coils, to value the steel bars used to produce HFHTs, as suggested by FMEC, SMC, and petitioner. However, we have determined that, since this category covers steel in wound coils, it does not cover the cut-to-length steel bars used to produce HFHTs. Instead, for the final results, we have used Indian import statistics and HTS category 7214.50, forged bars and rods containing more than 0.25 percent carbon but less than 0.60 percent carbon, to determine the surrogate value for steel. We have determined that this HTS category is more specific to the cut-to-length steel bars used to produce the subject merchandise.

Because the quantities imported into India under HTS category 7214.50 were not large in 1991 and 1992, we compared the steel values against other sources of market value, i.e., Indonesian import values and U.S. import values, to determine whether they were aberrational. We found that the 1992 Indian import value is not aberrational, and have used this value in our final results. We found that the 1991 value is aberrational by comparison to Indonesian and U.S. import statistics. Therefore, for the final results, for the 1991 surrogate value for steel, we have deflated the 1992 value to 1991 using wholesale price indices published by the International Monetary Fund. Because we have been able to use Indian import values in our analysis, we have not considered the other sources of surrogate values suggested by respondents.

We did not use the prices of steel imported by the factories because we do not know what models were produced using the imported steel or the portion of steel used by the factories which was imported.

Comment 3: Respondents argue that detergent used for cleaning and pellets used to remove the oxidation from the surface of the tool heads are considered by the factories, and should be considered by the Department, to be part of factory overhead, as these items are not physically incorporated into the finished product. They also note that the pellets are recycled until they are pulverized. Respondents cite to the Notice of Final Determination of Sales at Less Than Fair Value: Certain Paper Clips From the People's Republic of China (59 FR 51168, October 7, 1994) (Paper Clips) as evidence for their position. Respondents contend that, if the Department determines that the steel pellets are a direct factor input, the steel pellets should be valued as scrap, as the pellets are made from scrap steel bought locally.

Department's Position: We agree with respondents that pellets and detergent should be considered as factory overhead, and have changed our analysis accordingly. These items are used for the purposes of removing oxidation from the tool heads and for cleaning the tool heads, and are not physically incorporated into the subject merchandise. As such, they should not be valued as direct material inputs in the production of the subject merchandise. This is consistent with the Department's position in Paper Clips, in which the Department valued certain inputs as direct materials because they were physically incorporated into, and became part of, the subject merchandise.

Comment 4: Respondents contend that HTS category 3814, selected for dilution (paint thinner) for the preliminary results, is too broad, and argue that the narrower HTS category 3814.00.09 should be selected for this input.

Department's Position: We agree with respondents. The HTS category selected for dilution (paint thinner) for the preliminary results, HTS 3814, includes both ''composite solvents and thinners for varnishes and similar products'' and ''solvents for printing.'' The HTS category 3814.00.09 is specific to solvents and thinners and has been used for the final results.

Comment 5: Respondents state that the wedges are made by the HFHT factories from scrap steel generated from the production of the tool heads, rather than from steel bars. Therefore, respondents argue that the Department should value the wedges using the HTS category selected for scrap, rather than

the HTS category selected for steel. Further, respondents contend that, since the wedges are produced at the factories, there should be no adjustment for transportation for this input.

Department's Position: We agree with respondents. The record indicates that scrap steel resulting from the production process is used to produce other products which require small pieces. Therefore, we have adjusted the calculations so that wedges are valued with the value for scrap. Since these items are made at the factory, we have not made an adjustment for freight costs for this input.

Comment 6: Respondents argue that the packing costs determined by the Department are too high and clearly do not represent reasonable packing costs. According to respondents, the materials used to pack HFHTs are generally low-value items which are discarded once the shipments reach the importer's site. Respondents contend that deriving the cost of packing from surrogate values leads to erroneous results and that the use of basket categories biases the values toward high average values.

Respondents note that, in comparable cases, packing rates were 1–2 percent of production costs. Respondents cite as evidence Chrome-Plated Lug Nuts from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (60 FR 19719, April 20, 1995) (Lug Nuts I), where a rate of 1 percent of production costs was used as the best information available (BIA), and Lock Washers, in which the petitioner stated that its packing costs were 2 percent of its production costs.

Petitioner responds that there is no support on the record to show that the purportedly high packing costs result from surrogate country data which are unreliable because the packing materials are low-value inputs. Petitioner also states that it is irrelevant that packing costs are lower in the two cases cited by respondents because each case is fact specific. Moreover, petitioner argues that the supposed aberrations in the Indian import data do not justify rejecting valid data published by the Indian government.

Department's Position: We disagree with respondents that we should not use surrogate values to calculate packing costs. It is the Department's standard practice to use surrogate values to value packing costs. See, e.g., the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers from the People's Republic of China (60 FR 29571, June 5, 1995) and Pencils, for which Indian import statistics were used to value packing materials. Moreover, in *Lock Washers,* the Department valued packing materials using Indian import statistics. We further note that, in the administrative review of lug nuts from the PRC subsequent to that cited by respondents, factors data for packing were on the record of the review and were used to determine packing costs (Chrome-Plated Lug Nuts from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review (60 FR 42504, August 16, 1995) (Lug Nuts II).

For these reviews, unlike Lug Nuts I, the information needed to calculate packing costs using surrogate values is on the record. Therefore, for the final results, we have continued to value these packing inputs using surrogate values. However, as discussed in our response to comment 1 above, and in our responses to comments 7–11 below, we have made adjustments in the valuation of packing materials for the final results.

See our response to comment 1 regarding respondents' complaint about the use of basket categories.

Comment 7: Respondents argue that the Department should abandon its factor methodology for valuing the pallets based on the costs of the wood and the nails used to construct the pallets, and, instead, should determine a separate price for pallets. Respondents argue that the cost of a pallet as calculated by the Department is much higher than the cost to purchase a pallet in the United States.

Petitioner responds that the fact that the Department calculated a pallet cost which is substantially more than the cost of a wood pallet in the United States is irrelevant to the price of pallets in India or the PRC.

Department's Position: We agree with respondents that we should value the pallets separately, rather than valuing both the wood and the nails used to make the pallets. To value the pallets, we have used Indian import statistics and HTS category 4415.10, packing cases, boxes, crates, drums, and similar packings of wood, which was suggested by FMEC and SMC in their supplemental questionnaire responses prior to the preliminary results.

Comment 8: Respondents argue that the HTS category selected to value the cartons is too broad a category to determine a specific value for the cartons, and that a more specific price should be used. They note that two of the HFHT factories used imported cartons, and that the Department used the price of the imported cartons to value cartons for only one of those factories. They further state that the surrogate value is roughly three times higher than the value of the imported cartons, and argue that the price of the imported cartons should be used as a benchmark.

Department's Position: We disagree with respondents. We have continued to use for the final results the HTS category selected for the preliminary results of these reviews, HTS category 4819.10. There is no information on the record to indicate that either of the two narrower HTS categories, 4819.10.01, boxes of corrugated paper and paperboard, or 4819.10.09, cartons and cases of corrugated paper and paperboard, are more specific to this input. Therefore, we have valued the cartons using the broader HTS category 4819.10.

As discussed above in our response to comment 2, we have used import prices where we knew the percentage of the imported material to the total material purchased. Therefore, for one factory, we were able to use the price of the imported cartons to value the cartons. As mentioned by respondents, another factory also used imported cartons. Since the price paid by this factory for the imported cartons was in Chinese currency, we were unable to use this price.

Comment 9: Respondents argue that the categories selected to value the iron straps and the plastic straps are too broad and the variations in the Indian import statistics for these categories too great to reflect reasonable values for these factor inputs, and contend that an alternative source of valuation must be found. Further, according to respondents, imports from Yugoslavia were incorrectly excluded from the calculation of the average import value.

Department's Position: We agree with respondents that imports from Yugoslavia were incorrectly excluded from the calculation of the plastic strap, and have included such imports in our calculation of the surrogate value for the final results. We note, however, that respondents have not suggested an alternative HTS category or source for valuing the plastic strap, and, for the final results, we have continued to use the value selected for the plastic strap for the preliminary results.

Prior to the preliminary results, FMEC and SMC suggested HTS categories 7216.21.00 and 7216.60.01, angles, shapes and sections of hot-rolled steel and of cold-rolled steel to value the iron straps; the Department selected HTS category 7216.90.01, other angles, shapes and sections, as the appropriate category for iron straps for the

preliminary results. There is no information on the record to indicate which of these categories better covers the iron straps. Since respondents have not provided evidence to indicate that the HTS categories FMEC and SMC suggested are more appropriate, and since their brief simply indicates that an alternative source of valuation must be found since the category selected is too broad, without identifying an alternative source, we have continued to use the same category we selected for the preliminary results for the iron strap. Moreover, there is no indication that the HTS categories suggested by FMEC and SMC would be any less broad than that selected by the Department.

Comment 10: Respondents argue that the Department made significant errors in valuing the synthetic fiber (PVC bags) by inaccurately determining the weight of the bags, and contend that the calculation should be corrected.

Petitioner asserts that the respondents have not alleged that the information on which the Department based its calculation was wrong, but merely that the Department reached a different conclusion from respondents.

Department's Position: We agree with respondents, and have reweighed the synthetic fiber and adjusted the calculations accordingly.

Comment 11: Respondents argue that six materials used to pack HFHTs are incidental items and that their collective values are extremely small or *de minimis.* These materials are plastic bags, anti-rust paper, anti-damp paper, iron wire, iron buttons, and iron knots. Respondents argue that the use of basket categories to value these items makes their individual and collective values significant.

Respondents further argue that the anti-damp paper and the anti-rust paper are *de minimis* items which should be eliminated from the Department's calculations. Although they do not disagree with the HTS categories selected, they note that the aberrational values for these HTS categories indicate that the HTS categories include many items other than those being valued.

Respondents contend that the Department selected too broad a category for the plastic bags, inaccurately determined the weight of the plastic bags, and incorrectly excluded imports from Yugoslavia from the calculation.

Furthermore, according to respondents, the HTS category selected for the iron wire is too broad, and the iron wire was inaccurately weighed for the preliminary results. They also argue that the HTS categories selected for the iron knots and the iron buttons are too broad.

Petitioner responds that the record shows that anti-damp paper and anti-rust paper are not *de minimis* factors in India. Petitioner also states that it is impossible to reweigh the plastic bags at this point in the process, and that FMEC and SMC should have provided additional information regarding the weights of these items with their questionnaire responses or at verification.

Department's Position: We disagree with respondents that certain factor inputs should be eliminated from the analysis because of their small value. The items identified by respondents as being incidental items are all materials used to pack the subject merchandise, and, as such, they should be valued.

We agree with respondents that the HTS categories selected for the plastics bags and the iron wire were incorrect. We have used, for the final results, the categories suggested by the respondents, HTS category 3923.21 for the plastic bags and HTS category 7217.90 for the iron wire. However, we have found that the Indian import statistics for the iron wire are aberrational, and have used Indonesian import statistics to determine the surrogate values for the iron wire for these final results. Moreover, as samples of these items were provided to the Department prior to the issuance of the preliminary results of reviews, we have reweighed these items and have adjusted our calculations accordingly. We also agree that imports from Yugoslavia should be included in the calculation of the average import values; however, we note that there were no imports into India from Yugoslavia in 1991 or 1992 under the HTS category for plastic bags selected for the final results.

We have continued to use the same HTS categories selected for the preliminary results for the anti-damp paper, the anti-rust paper, the iron buttons and the iron knots. We note that we used the categories suggested by the respondents prior to the preliminary results for the anti-damp paper and the anti-rust paper, and that respondents did not suggest a category for the iron buttons. For the iron knots, we have selected HTS category 8309.90.09, other packing accessories of base metal, rather than the HTS category suggested by respondents, 7326.90.09, other articles of iron or steel, because it is more specific to the packing input being valued.

Comment 12: Respondents contend that the labor rates and the fringe benefit and bonus rates used by the Department in its preliminary results, collected from the Business International Corporation (BIC) report IL&T India, released November 1992, appear to reflect wage rates in urban areas, while the Chinese HFHT factories are located in rural areas. They note that the BIC is a non-government organization which provides estimates of Indian labor rates based on available data. The respondents state that they do not contest the estimated wage rates used by the Department in its preliminary results, as they believe that they are comparable to those used by the Department in other cases, such as Lighters and Furfuryl Alcohol, but argue that the adjustment for fringe benefits and bonuses should be reduced to those required by Indian law.

Petitioner responds that the respondents' assertion that the labor rates reported in IL&T India appear to reflect wages in urban areas is without citation or support, and that there is no evidence on the record to suggest that these data are inappropriate for valuing labor. It contends that the respondents' suggested bonus rates are based solely on the mandatory statutory bonus rates and do not reflect any amounts for fringe benefits paid in India or any benefits privately negotiated between employers and employees. It notes that there could easily be benefit levels beyond the statutory minimum requirements. Petitioner further notes that respondents do not contest the use of wage rates from the same publication from which these fringe benefit and bonus rates were obtained. Petitioner further contends that the wage rates used in Lighters and Furfuryl Alcohol are irrelevant to this case because these industries are not comparable to the HFHT industry and because the surrogate country used in those cases was Indonesia.

Department's Position: We disagree with respondents. Respondents have not placed any information on the record to demonstrate that the labor rates used in our preliminary results reflect wage rates in urban, rather than rural, areas. Moreover, we agree with petitioner that there could be benefit levels beyond what is statutorily required. The data provided by the BIC with respect to fringe benefits and bonuses provide an estimate of what is actually paid, and is therefore more indicative of actual fringe benefits and bonuses paid to workers in India than the minimum requirements of Indian law. Since the surrogate values should reflect actual costs in the surrogate country, we have continued to use the wage rates and the fringe benefit and bonus rates used in the preliminary results, rather than the

minimum requirements of Indian law, as suggested by respondents.

Comment 13: Respondents argue that the surrogate values for electricity and coal should be adjusted to account for the period during which picks sold by FMEC were produced.

Department's Position: We agree with respondents. As discussed above in our response to comment 1, we have valued production occurring in 1991 using 1991 values, and production occurring in 1992 using 1992 values. Accordingly, all inputs for merchandise produced in 1991 have been valued using 1991 values, not just coal and electricity.

Comment 14: Respondents argue that the Department erred in determining the amounts of scrap and waste which were sold, and should recalculate these amounts. According to respondents, the amounts reported in the questionnaire responses as total scrap and waste collected were verified and represent scrap sold.

Department's Position: We agree with respondents. As discussed in FMEC's and SMC's questionnaire responses, the amounts reported as scrap and waste collected are the amounts of salable scrap. We have adjusted our calculations to reflect these reported amounts of salable scrap.

Comment 15: According to respondents, the Department should determine the steel input factor according to the methodology applied in Lock Washers. Respondents contend that, in that case, the Department determined the steel input factor by disregarding the scrap and valuing the steel factor based on the net weight of the finished product plus the waste. According to respondents, the Department would not have to determine scrap values with this methodology.

Department's Position: We disagree with respondents. In order to determine the costs of materials to a producer, we multiply the gross amounts of the materials used in the production process by the surrogate values. If the producer sells scrap resulting from the production process, we allow revenue resulting from that sale as an offset to the materials costs. Since the value of the scrap which is sold is less than the value of the material input purchased by the manufacturer, we calculate the revenue from the sale of scrap by multiplying the amount of scrap sold by the value of the scrap, and subtracting that result from the materials costs. Using respondents' methodology would mean that the scrap is valued at the original input cost, which would overstate the scrap value.

Comment 16: Respondents recommend that the Department use the rail rate reported in Doing Business in India—An Economic Profile, published by the Director, Economic Coordination Unit, Ministry of External Affairs. According to respondents, this information should be used because it is official Indian government data, is more current than the data used for the preliminary results of reviews, and provides a specific rate on a per-kilometer basis, rather than for a range of kilometers.

Petitioner responds that the Department should reject the freight rate suggested by the respondents as it is less detailed than the cable data used in the preliminary results of these reviews, as well as other investigations and reviews.

Department's Position: We disagree with respondents. The rail freight rate suggested by the respondents was submitted to the record of these reviews after the preliminary results were issued, and therefore was returned as untimely filed pursuant to section 353.31(a)(3) of the Department's regulations.

Comment 17: Respondents argue that, in those instances where the distance between a factory and one of its suppliers is not supplied, the Department should use a simple average of the distances which were provided, rather than applying the longest distance as BIA. Respondents contend using the longest distance imposes a burden on small, rural factories to keep records beyond their abilities and unfairly adds to the input costs.

Moreover, as mentioned in Comment 5, respondents contend that the Department should not adjust the factor input for wedges for transportation as the wedges were made at the factory site from scrap. In the case of pellets, respondents argue that the Department should recognize that the pellets were sourced locally and make the adjustment for transportation accordingly, if the Department does not include pellets in factory overhead.

Lastly, respondents contend that the factories used their own trucks to pick up materials from the rail yards, and that expenses associated with these trucks are considered as overhead by the factories. Accordingly, they contend that where factory trucks are used, no adjustment for transportation costs should be made. Respondents cite to Lock Washers as evidence for their position.

Petitioner responds that use of the longest reported distance between a factory and one of its suppliers in those instances where no distances have been reported is reasonable and consistent with past Department practice.

Department's Position: We disagree with respondents. We have applied as BIA the longest distance in two situations: first, when the distance between a factory and its supplier was not reported; and second, when several suppliers supplied a factory with the input and the percentage of material purchased from each supplier was not reported. In their questionnaire responses, FMEC and SMC did not indicate that they could not provide such information for all factors. As petitioner states, it is the Department's practice to use the longest distance in such instances. *See, e.g.,* Pencils and Saccharin, where the most expensive distance/mode of transportation was used when a respondent had failed to provide information regarding transportation between factories and suppliers.

As discussed in our response to comment 12, we agree with respondents that wedges were made at the factory and have not made an adjustment for transportation for this input.

We disagree with respondents that certain truck costs should be considered as factory overhead. There is nothing on the record to indicate that factory trucks are used to pick up merchandise from the rail yards.

Comment 18: Respondents argue that, in calculating the average ocean freight rates for FMEC and SMC for shipments made by non-PRC-owned ocean freight companies, which have been applied to those sales for which ocean freight services were provided by PRC-owned companies, the Department omitted several non-PRC-owned company shipments. According to respondents, the calculation of the average ocean freight rates should be revised to include these shipments.

Department's Position: We agree with respondents that there is additional information on the record regarding ocean freight shipments provided by non-PRC-owned carriers which was not included in our preliminary calculation of the average ocean freight rates. Therefore, for these final results, we have recalculated the average ocean freight rates using the additional shipments.

Comment 19: According to respondents, the Department should have calculated the average ocean freight rates for shipments supplied by non-PRC-owned companies on a weight basis, by dividing the reported per-piece ocean freight charge by the weight per piece.

Department's Position: We disagree with respondents. We calculated the

average ocean freight rate by dividing the ocean freight charge for each shipment by non-PRC-owned companies by the weight of the finished product; then, the results were summed for those shipments, and the total divided by the total number of pieces shipped by non-PRC-owned companies. This methodology is more accurate than respondents' methodology because it allocates the weight of each shipment to the charge for that shipment. Conversely, respondents' methodology, by which the total of the ocean freight charges for shipments by non-PRC-owned companies would be divided by the total weight of those shipments, allocates the weight of each shipment over all ocean freight charges. Therefore, we have not changed our calculation of the average ocean freight rates, except to include the additional shipments, as discussed in our response to comment 18.

Final Results of Reviews

As a result of our reviews, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fujian Machinery & Equipment Import & Export Corporation		
Axes/Adzes	2/1/92–1/31/93	21.92
Bars/Wedges	2/1/92–1/31/93	66.32
Hammers/Sledges	2/1/92–1/31/93	44.41
Picks/Mattocks	2/1/92–1/31/93	108.20
Shandong Machinery Import & Export Corporation		
Axes/Adzes	2/1/92–1/31/93	21.92
Bars/Wedges	2/1/92–1/31/93	49.69
Hammers/Sledges	2/1/92–1/31/93	35.57
Picks/Mattocks	2/1/92–1/31/93	49.64

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms as stated above; (2) for all other PRC exporters, the cash deposit rates will be the rates established in the less-than-fair-value (LTFV) investigations; and (3) the cash deposit rates for non-PRC exporters of the subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. The rates established in the LTFV investigations are 45.42 percent for hammers/sledges, 31.76 percent for bars/wedges, 50.81 percent for picks/mattocks, and 15.02 percent for axes/adzes. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–23580 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–814]

Pure Magnesium From Canada, Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 5, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on pure magnesium from Canada. The review covers one company, Norsk Hydro Canada, Inc. (NHCI), for the period August 1, 1993, through July 31, 1994. Since there were no shipments of the subject merchandise during the period of review, we have assigned NHCI the 21 percent cash deposit rate established for all entries of pure magnesium in *Pure Magnesium From Canada: Amendment of Final Determination of Sales at Less than Fair Value and Order in Accordance with Decision on Remand* (58 FR 62643), November 29, 1993.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution

Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793 or 48204114, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 5, 1995, the Department published in the Federal Register the preliminary results (60 FR 34967) of its administrative review of the antidumping duty order on pure magnesium from Canada. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

Final Results of Review

The Department received no comments on its preliminary results. The first administrative review of this order has not yet been completed. Therefore, we have assigned NHCI the cash deposit established for ''all other'' producers and exporters in *Pure Magnesium From Canada: Amendment of Final Determination of Sales at Less Than Fair Value and Order in Accordance with Decision on Remand* (58 FR 62643), November 29, 1993. The rate is 21 percent.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in any review or the original less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) for all other producers and/or exporters of this merchandise, the cash deposit shall be 21 percent, the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until the publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–23579 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[(A–821–802), (A–834–802), (A–844–802)]

Suspension Agreements on Uranium from the Russian Federation, Kazakhstan, and Uzbekistan.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Information solicitation of U.S. electric utilities concerned with third country enrichment issue.

SUMMARY: In order to facilitate its evaluation of the application of the Agreements Suspending the Antidumping Investigations on Uranium from the Russian Federation, Kazakhstan, and Uzbekistan, the Department is requesting that those U.S. electric utilities which have contracts that may be affected by implementation of amendments to these agreements provide certain information to the Department, as outlined below.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: James Doyle or Alexander Braier, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

NOTICE: On March 27, 1995, the Department and the Republic of Kazakhstan finalized an amendment to the Kazakhstan uranium suspension agreement. This amendment, in part, provided that the quantitative restraints on Kazakhstani-origin uranium includes all uranium mined and milled in Kazakhstan and enriched in a third country prior to exportation to the United States. On June 21, 1995, the Department and the Government of Uzbekistan initialed an amendment to the Uzbekistan uranium suspension agreement which expanded the definition of Uzbek-origin uranium in a manner similar to the Kazakhstan amendment. The Department expects to sign this amendment with Uzbekistan soon. In addition, the Department expects to accelerate consultations with the Russian Federation regarding an amendment to the Russian uranium suspension agreement. In the amendment that results from these consultations, the Department expects to treat Russian-origin uranium in a manner similar to the Kazakhstan-origin amendment. As a result of these changes, uranium from these countries that has undergone enrichment in a third country prior to importation into the United States will be subject to the export limits of the suspension agreements.

The Department is interested in considering the precise effects on U.S. utilites regarding the implementation of the Kazakhstani amendment, and upcoming Uzbek and Russian amendments. In order to facilitate its evaluation, the Department needs certain contract-specific information from the U.S. utilities that hold these contracts. Therefore, the Department hereby notifies all U.S. electric utilities that have contracts that they believe will be affected by these changes to submit for the record the information pertaining to these contracts. The Department requests that all affected utilities

respond within 10 days of the publication date of this notice. Finally, the Department notes that it will require access to the underlying contracts.

All information provided to the Department by U.S. electric utilities will be subject to release under Administrative Protective Order in accordance with 19 CFR 353.34.

Dated: September 19, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Annex

- Provide the total number of natural uranium contracts your utility holds for Russian, Kazakhstani, or Uzbek and which are scheduled for, or have undergone, foreign enrichment, and are intended for importation to the United States.
- Provide the number of foreign enrichment contracts.
- For each of these contracts, provide the following information:
- Contracting parties;
- Contract signature dates;
- Contract terms:
- base, minimum and maximum volumes, over life of contract,
- if a requirements contract, provide complete information to determine base, minimum and maximum volumes over the life of the contract,
- acceleration clauses,
- delivery schedules to utilities' accounts in the third country, with minimum, base and maximum volumes stipulated in each contract for each delivery period,
- quantities and associated delivery schedules of EUP to the United States,
- contract amendment dates and terms if applicable,
- Force majeure language,
- Origin specifications,
- Any other options or flexibilities potentially affecting the volume or natural uranium deliverable under the contract.
- Exact quantities of affected U_3O_8, UF_6 and EUP in the accounts of each utility in the third country that are earmarked for third country enrichment.
- For each of these accounts, please provide the date and quantity of each transfer to the utility's account.
- For data presented in terms of UF_6 or EUP, please provide the enrichment percentage, and demonstrate the calculation used to convert these volumes into pounds U_3O_8 equivalent.

[FR Doc. 95–23676 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 091395A]

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit 977 (P771#74).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE. BIN C15700, Bldg. 4, Room 2149, Seattle, WA 98115–0070 has been issued a permit to take California sea lions (*Zalophus californianus*), Northern fur seals (*Callorhinus ursinus*), and Northern elephant seals (*Mirounga angustirostris*) for the purpose of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Kellie M. Foster, 301/713–1401.

SUPPLEMENTARY INFORMATION: On June 22, 1995, notice was published in the Federal Register (60 FR 32507) that a request for a scientific research permit to take California sea lions, Northern fur seals and Northern elephant seals had been submitted by the above-named individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations at 50 CFR part 215.

The permit authorized the holder to take up to 250,410 California sea lions, 9,275 Northern fur seals and 21,650 Northern elephant seals in the course of conducting four research projects which will focus on several aspects of California sea lion biology: 1) annual at-sea distribution, foraging behavior, and food habits of adult females, mother-pup activity patterns and weaning behavior; 2) identification of diseases in the population and the effects of diseases on survival of individuals and weaning parameters of pups; 3) assessment of vital parameters; and 4) assessment of population trends and pup mortality: live and dead pup counts. Research will take place on San Miguel Island, the Channel Islands and haul-out sites along the entire coast of California. Research will be initiated in September 1995.

Dated: September 14, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–23562 Filed 9–21–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List bond paper to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 34235) of proposed addition to the Procurement List.

Comments were received after the close of the comment period from a lawyer representing the parent corporation of two of the current contractors for the paper. The lawyer objected to the denial of his request for an extension of the comment period. He claimed that his client had received inadequate notice of the Committee's proposal to add the paper to the Procurement List, that the Committee is required to grant an extension of the comment period, and that the procurement schedule of the Federal agency which buys the paper for the Government is irrelevant to the Procurement List addition process.

The Committee is required by law to provide notice of proposed additions to the Procurement List through publication in the Federal Register. This publication is considered to be adequate notice to all affected parties. 44 U.S.C. 1507. The lawyer's client is a very large corporation which cannot be said to be ignorant of the Federal Register.

The lawyer based his claim that the Committee is required to grant an

extension of the comment period on a 1978 legal opinion concerning another addition to the Procurement List, *Barrier Industries, Inc.* v. *Eckard,* 584 F.2d 1074 (D.C. Cir.). That opinion addresses the issue of notice only by saying that the required form of notice is publication in the Federal Register, 584 F.2d at 1082, and that the failure by the plaintiff in that case to note the Federal Register publication meant that it missed its opportunity to submit comments, 584 F.2d at 1083. Nothing in the opinion supports the lawyer's contention that the Committee is required to grant an extension of a comment period.

The Government purchases the paper through semiannual requirements contracts. If the Committee were to grant the requested extension of the comment period, its addition of the paper to the Procurement List would be sufficiently delayed that half a year's requirement for the paper would not be available for production under the Committee's program. The statutory purpose of the Committee's program, to create jobs for people who are blind or severely disabled, would be frustrated as these people would be unable to produce the paper.

Because the corporation the lawyer represents is very large, the percentage of its sales which the Government requirement for this paper represents is extremely small, so it is very unlikely that the addition to the Procurement List would have a severe adverse impact on the corporation. Accordingly, it is unlikely that an extension of the comment period would result in any significant new information being brought to the Committee's attention. Any information the lawyer obtains later can be brought to the Committee's attention through the reconsideration process set forth in Committee regulations at 41 CFR 51–2.6.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are 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 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 commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities 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 commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Paper, Bond
7530–00–290–0599
7530–00–290–0600
7530–00–290–0617
7530–00–290–0618

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23592 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 21, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 37631) of proposed addition to the Procurement List.

Comments were received from two organizations and a State agency which represent blind people. All three commenters claimed that adding this service to the Procurement List would conflict with the priority afforded blind vendors in Federal buildings by the Randolph-Sheppard Act, 20 U.S.C. 107. Two commenters also objected to the Committee's certification under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that there was no regulatory alternative to adding the service to the Procurement List which would accomplish the objectives of the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 46–48c. Those commenters indicated that provision of the service under the Randolph-Sheppard Act would accomplish the objectives of the JWOD Act. One commenter asked the Committee not to inject the JWOD Program into a controversy between the Department of Veterans Affairs (VA) and the blind vendor community over the application of the Randolph-Sheppard Act to VA facilities.

The Randolph-Sheppard Act provides, in pertinent part, that blind vendors are authorized to operate ''vending facilities'' on Federal property, 20 U.S.C. 107(a), and are afforded a priority for ''operation of cafeterias on Federal property,'' 20 U.S.C. 107d–3(e). The service to be provided by a nonprofit agency employing people with severe disabilities at the VA medical center will involve the performance of a number of discrete food service activities, such as preparation of Government-provided food, transporting meals to patient rooms, and cleaning utensils and the food service facility. VA will retain overall management control of food service operations. VA does not charge any fee to the individuals who consume the food, and the nonprofit agency will be paid by VA out of funds appropriated for the operation of the medical center. Consequently, the Committee believes that addition of the service to the Procurement List does not violate the Randolph-Sheppard Act, as no vending of food occurs, and the limited services to be provided by the nonprofit agency under VA management control do not constitute operation of a cafeteria.

The Committee does not agree that provision of this service under the Randolph-Sheppard Act would accomplish the objectives of the JWOD Act, which are to create employment for individuals with severe disabilities through using them to perform the labor connected with providing the service to the Government. The Randolph-Sheppard Act provides employment only for one blind vendor per food service operation, and for the people the vendor hires, who are not required to have any disabilities. Provision of the service under the JWOD Program will create employment for several individuals with severe disabilities.

The controversy between VA and the blind vendor community concerns application of the Randolph-Sheppard Act to VA canteen service operations at medical centers. The patient food service involved in this addition to the Procurement List is not connected to the medical center's canteen operation. Accordingly, the Committee does not believe this addition to the Procurement List will inject the JWOD Program into the controversy.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are 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 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 service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the 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 service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Food Service Attendant, Department of Veterans Affairs Medical Center, Mountain Home, Tennessee

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23593 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 28, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 38794) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are 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 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 service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the 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 service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List: Food Service Attendant, U.S. Coast Guard Air Station, Clearwater, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23594 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List, Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 23, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

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 commodities and services 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 commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services 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 commodities and services 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.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Paper, Mimeograph and Duplicating
7530–00–234–7169
7530–00–285–3060
7530–00–285–3070
7530–00–285–3072
7530–00–285–3073
7530–00–286–6178
7530–01–072–2533
7530–01–074–1832
7530–00–160–8260
7530–00–213–7125
7530–00–221–0805
7530–00–224–6754
7530–00–239–9747
7530–00–253–0986
7530–01–037–5555
7530–01–037–5556
7530–01–071–9768
7530–01–071–9775
7530–01–072–2534
7530–01–240–4768
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

Liner, Poncho, Wet Weather
8405–00–889–3683
(Remaining Government Requirement)
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Services

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Training Building, Portland, Oregon
NPA: Tualatin Valley Workshop, Inc., Hillsboro, Oregon

Janitorial/Custodial, Clarksburg AMSA, 6 Armory Road, Clarksburg, West Virginia
NPA: Summit Job Squad, Inc., Clarksburg, West Virginia

Janitorial/Custodial, Clarksburg Memorial U.S. Army Reserve Center, Route 19 South, Clarksburg, West Virginia
NPA: Summit Job Squad, Inc., Clarksburg, West Virginia

Mailroom Operation, Immigration and Naturalization Service, Administrative Center & Western Operations Region, Laguna Niguel, California
NPA: Goodwill Industries of Orange County Santa Ana, California

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 95–23595 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare Environmental Impact Analyses for Defense Base Realignment and Disposal Actions Resulting from the 1995 Commission's Recommendations

AGENCY: United States Army, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Defense Base Closure and Realignment Commissions were established by Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, to recommend military installations for realignment and closure. The 1995 Commission's recommendations were included in a report which was presented to the President on July 1, 1995. The President approved and forwarded this report to Congress on July 13, 1995. A joint resolution to disapprove these recommendations did not pass in Congress on September 8, 1995. Thus, if no further action is undertaken to disapprove such recommendations within the statutorily provided time period, then these recommendations will become law and must be implemented consistent with the requirements of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510.

Public Law 101–510 exempts the decision-making processes of the Commission from the provisions of the National Environmental Policy Act of 1969 (NEPA). The law also relieves the Department of Defense from the NEPA requirement to consider the need for closing, realigning, or transferring functions and from looking at alternative installations to close or realign. Nonetheless, the Department of the Army must still prepare environmental impact analyses during the process of property disposal and during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. These analyses will include consideration of the direct and indirect environmental and socioeconomic effects of these actions and the cumulative impacts of other reasonably foreseeable actions affecting the installation during the same time.

The Army intends to prepare environmental impact analysis to assess the environmental effects of the actions listed below. Opportunities for public participation will be announced in the local newspaper. Comments from the public will be considered before any action is taken to implement these actions.

a. Environmental Assessments are planned for the following realignment actions:

(1) Anniston Army Depot, Alabama, receiving: towed and self-propelled combat vehicle mission from Letterkenny Army Depot, Pennsylvania; and material remaining at Defense Distribution Depot Letterkenny (DDLP) at the time of disestablishment from DDLP, Chambersburg, Pennsylvania, to be combined at the Defense Distribution Depot Anniston, Alabama (DDAA).

(2) Detroit Arsenal, Michigan, receiving: automotive materiel management functions from Aviation-Troop Command, St. Louis, Missouri, to align with Tank-Automotive and Armaments Command.

(3) Fort Belvoir, Virginia, receiving: Concepts Analysis Agency from leased facilities in Bethesda, Maryland.

(4) Fort Bliss, Texas, receiving: U.S. Army Test and Experimentation Center missions and functions from Fort Hunter Liggett, California.

(5) Fort Detrick, Maryland, receiving: 1111th Signal Battalion and 1108th Signal Brigade from Fort Ritchie, Maryland.

(6) Fort Huachuca, Arizona, receiving: Information Systems Engineering Command elements from Fort Ritchie, Maryland.

(7) Fort Jackson, South Carolina, receiving: Defense Polygraph Institute from Fort McClellan, Alabama.

(8) Fort Meade, Maryland, receiving: Defense Investigative Service, Investigations Control and Automation Directorate from Fort Holabird, Maryland; and Information Systems Software Center from leased facilities in Fairfax, Virginia.

(9) Fort Monmouth, New Jersey, receiving: functions related to materiel management of communications-electronics from Aviation-Troop Command, St. Louis, Missouri, to align with Communications-Electronics Command.

(10) Fort Wainwright, Alaska, receiving: Cold Regions Test Activity and Northern Warfare Training Center from Fort Greely, Alaska.

(11) McAlester Army Ammunition Plant, Oklahoma, receiving: U.S. Army Defense Ammunition Center and School from Savanna Army Depot Activity, Illinois.

(12) Redstone Arsenal, Huntsville, Alabama, receiving: Aviation Research, Development & Engineering Center; Aviation Management; and Aviation

Program Executive Offices from Aviation-Troop Command, St. Louis, Missouri, to form the Aviation & Missile Command.

(13) Tobyhanna Army Depot, Pennsylvania, receiving: core missile guidance system workload from Letterkenny Army Depot, Pennsylvania; and Common-Use Ground-Communication Electronics from McClellan Air Force Base, California.

b. An Environmental Impact Statement is planned for Fort Leonard Wood, Missouri, receiving: U.S. Army Military Police School and U.S. Army Chemical School from Fort McClellan, Alabama.

c. Environmental Assessments are planned for property disposal actions at the following closure locations:

(1) Bellmore Logistics Activity, New York;

(2) Big Coppett Key, Florida;

(3) Camp Bonneville, Washington;

(4) Camp Kilmer, New Jersey;

(5) Camp Pedericktown, New Jersey;

(6) Defense Distribution Depot, Ogden, Utah;

(7) Detroit Army Tank Plan, Michigan;

(8) East Fort Baker, California;

(9) Fort Buchanan, Puerto Rico;

(10) Fort Dix, New Jersey;

(11) Fort Greely, Alaska;

(12) Fort Holabird, Maryland;

(13) Fort Missoula, Montana;

(14) Fort Pickett, Virginia;

(15) Fort Totten, New York;

(16) Hingham Cohassett, Massachusetts;

(17) Kelly Support Center, Pennsylvania;

(18) Letterkenny Army Depot, Pennsylvania;

(19) Recreation Center #2, North Carolina;

(20) Red River Army Depot, Texas;

(21) Rio Vista Army Reserve Center, California;

(22) Seneca Army Depot, New York;

(23) Sierra Army Depot, California; and

(24) Sudbury Training Annex, Massachusetts.

d. Environmental Impact Statements are planned for property disposal actions at the following closure locations:

(1) Bayonne Military Ocean Terminal, New Jersey;

(2) Defense Distribution Depot, Memphis, Tennessee;

(3) Fitzsimons Army Medical Center, Colorado;

(4) Fort Chaffee, Arkansas;

(5) Fort McClellan, Alabama;

(6) Fort Ritchie, Maryland;

(7) Oakland Army Base, California;

(8) Savanna Army Depot Activity, Illinois; and

(9) Stratford Army Engine Plant, Connecticut.

FOR FURTHER INFORMATION CONTACT: For further information regarding these environmental impact analyses, please contact the Public Affairs Office of the affected installations or the appropriate higher headquarters as indicated below:

Installation	(Area code) commercial No.
Anniston Army Depot, AL	(205) 235–6281
Bayonne Military Ocean Terminal, NJ	(201) 823–6351
Bellmore Logistics Activity, NY	(404) 669–5607/5686
Big Coppett Key, FL	(404) 669–5607/5686
Camp Bonneville, WA	(404) 669–5607/5686
Camp Kilmer, NJ	(404) 669–5607/5686
Camp Pedrick-town, NJ	(404) 669–5607/5686
Defense Distribution Ctr, Memphis, TN	(901) 775–6753
Defense Distribution Ctr, Odgen, UT	(801) 399–7828
Detroit Army Tank Plant, MI	(810) 574–6584
Detroit Arsenal, MI	(810) 574–6584
East Fort Baker, CA	(404) 669/5607/5686
Fitzsimons Army Medical Center, CO	(303) 361–3192/3952
Fort Belvoir, VA	(703) 805–5001
Fort Bliss, TX	(915) 568–4505
Fort Buchanan, PR	(404) 669–5607/5686
Fort Chaffee, AR	(501) 484–2905
Fort Detrick, MD	(301) 619–2018
Fort Dix, NJ	(404) 669–5607/5686
Fort Greely, AK	(907) 873–4661
Fort Holabird, MD	(301) 677–1361
Fort Huachuca, AZ	(602) 533–2752
Fort Jackson, SC	(803) 751–7650
Fort Leonard Wood, MO	(314) 563–4013
Fort McClellan, AL	(205) 848–3643/6716
Fort Meade, MD	(301) 677–1361
Fort Missoula, MT	(404) 669–5607/5686
Fort Monmouth, NJ	(908) 532–6031
Fort Pickett, VA	(404) 669–5607/5686
Fort Ritchie, MD	(301) 878–5729
Foprt Totten, NY	(404) 669–5607/5686
Fort Wainwright, AK	(907) 353–6706
Hingham Cohassett, MA	(404) 669–5607/5686
Kelly Support Center, PA	(404) 669–5607/5686
Letterkenny Army Depot, PA	(717) 267–5102
McAlester Army Ammo Plant, OK	(816) 421–2191
Oakland Army Base, CA	(510) 466–3021
Recreation Center #2, NC	(404) 669–5607/5686
Red River Army Depot, TX	(903) 334–3143
Redstone Arsenal, Huntsville, AL	(205) 876–4161
Rio Vista Army Reserve Center, CA	(404) 669–5607/5686
Savanna Army Depot Activity, IL	(815) 273–8701
Seneca Army Depot, NY	(607) 869–1235
Sierra Army Depot, CA	(916) 827–4343
Stratford Army Engine Plant, CT	(810) 574–6584
Sudbury Training Annex, MA	(404) 669–5607/5686
Tobyhanna Army Depot, PA	(717) 894–7308

Dated: September 19, 1995.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

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BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Draft Waste Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Waste Management Programmatic Environmental Impact Statement (PEIS) for public review and comment. The draft PEIS has been prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500–1508; and DOE NEPA Implementing Procedures, 10 CFR Part 1021. The draft PEIS evaluates waste management strategies and siting alternatives for each of five waste types: high-level waste; transuranic waste; low-level waste; low-level mixed waste; and hazardous waste. The public is invited to comment on the draft PEIS during a 90-day public comment period, which starts on the date of this Notice.

ADDRESSES: Requests for information about and copies of the draft PEIS should be directed to: Center for Environmental Management Information, P.O. Box 23769, Washington, D.C. 20026–3769, 1–800–736–3282 or in Washington, D.C.: 202–863–5084.

Written comments on the draft PEIS should be mailed to the following address: U.S. Department of Energy, Waste Management PEIS Comments, P.O. Box 3790, Gaithersburg, MD 20885–3790.

For information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4600 or leave message at 1–800–472–2756.

Availability of the draft PEIS: Copies of the draft PEIS have been distributed to Federal, State, and local officials, as well as agencies, organizations and individuals who may be interested or affected. Copies of the draft PEIS and supporting technical reports are also available for public review at the locations listed at the end of this Notice.

DATES: The comment period on the draft PEIS will continue until December 21, 1995. Comments postmarked after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, DOE issued a Notice of Intent (55 FR 42633) to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. DOE identified the proposed action as follows: ''to formulate and implement an integrated environmental restoration and waste management program in a safe and environmentally sound manner and in compliance with applicable laws, regulations and standards.'' The Notice of Intent identified two separate sets of alternatives to be evaluated, one for environmental restoration and one for waste management. The public comment period on the Notice of Intent extended from October 22, 1990 to February 19, 1991, with 23 public scoping meetings at various locations across the country.

The availability of a draft Implementation Plan for the PEIS was announced on February 4, 1992 (57 FR 4193), and after six public workshops, the Plan was completed in January 1994 and made available to the public (59 FR 7990, February 17, 1994). Subsequently, DOE concluded that it would be inappropriate to make programmatic decisions regarding environmental restoration strategies because such cleanup decisions primarily reflect site- and/or project-specific conditions. The draft PEIS now considers DOE-wide management strategies for five types of radioactive and/or hazardous wastes and analyzes alternative sites at which the wastes could be managed in the future. This approach is consistent with the alternatives outlined for waste management in the PEIS Implementation Plan.

Alternatives Considered

The draft PEIS evaluates treatment, storage and/or disposal alternatives for five types of radioactive and/or hazardous waste in DOE's existing inventory and waste to be generated from DOE's operations over the next twenty years. Due to the complexity and unique management requirements of each of the waste types, the draft PEIS contains separate analyses of each waste type as follows: High-level waste; transuranic waste; low-level waste; low-level mixed waste (containing radioactive and hazardous components); and hazardous waste.

Four categories of management alternatives are considered. The No Action (status quo) alternative would provide a baseline for comparing other alternatives. The Decentralized alternatives would maintain waste management activities essentially at the sites of generation. The Regionalized alternatives would provide for fewer locations at which waste is managed, and the Centralized alternatives would consolidate waste management activities at one or two sites. Within each category, there are a number of subalternatives for each waste type. The alternatives analyzed for each waste type encompass the following activities.

- Storage of high-level waste;
- Treatment and storage of transuranic waste;
- Treatment and disposal of low-level and low-level mixed waste; and
- Treatment of hazardous waste.

Preferred Alternatives

The draft PEIS identifies DOE's preferred management alternatives for three of the five waste types, as follows:

- The No Action (status quo) alternative is preferred for the treatment of hazardous wastes, which would continue the extensive use of commercial facilities for non-wastewater hazardous waste and on-site treatment of hazardous wastewater at DOE sites.
- DOE prefers to continue to store high-level waste on-site at the Hanford site, Idaho National Engineering Laboratory, and the Savannah River site, pending disposal in a geologic repository. This preferred alternative can be accommodated under either the No Action, Decentralized, or Regionalized alternatives. DOE does not yet have a preference as to where West Valley Demonstration Project high-level waste, once vitrified, will be stored, pending disposal in a geologic repository.
- The Regionalist Alternatives are preferred for low-level mixed waste treatment because they most closely approximate DOE's proposed Site Treatment Plans, under the Federal Facility Compliance Act. However, ongoing negotiations with regulatory authorities regarding the proposed Site Treatment Plans may affect this preference.

Invitation To Comment

The public is invited to submit written and oral comments on any or all portions of the draft PEIS. Example topics on which DOE welcomes comments include: the technical adequacy of the document; what alternatives DOE should select upon completion of the document; and what criteria DOE should use in making these selections.

DOE will hold a series of eleven public hearings according to the schedule provided at the end of this section. In general, these meetings will be supported by a televideo link with DOE Headquarters in Washington, D.C. This approach will allow DOE Headquarters officials to efficiently participate in the meetings in an interactive forum with the public. The session format will provide for collection of written and oral comments and will enable the public to discuss issues and concerns with DOE managers. Participants who wish to speak at the hearings are asked to register in advance by calling the following toll-free number: 1–800–736–3282. Requests to speak that have not been submitted prior to the hearings will be handled in the order in which they are received during the meetings. DOE's responses to comments received during the public comment period will be presented in the final PEIS.

Schedule of Public Hearings

October 17, 1995—Aiken, SC

6:00–10:00 pm eastern time, SR Highway 1A, Building 703–41A (Yellow Room), Aiken, SC 29802, Contact: Andrew Grainger, 803–725–1523

October 24, 1995—Oak Ridge, TN

6:00–10:00 pm eastern time, Lockheed Martin Technology Transfer Bldg., 701 Scarboro Road, Room 240, Oak Ridge, TN 37831, Contact: William Gilbert, 423–576–1817

October 25, 1995—Idaho Falls, ID

6:00–10:00 mountain time, 8:00–12:00 eastern time, Technical Support Annex, 1580 Sawtelle Dr., Room 133, Idaho Falls, ID 83403, Contact: Kenny Osborne, 208–526–0805

October 25, 1995—Boise, ID

6:00–10:00 mountain time, 8:00–12:00 eastern time, Simplot Micron Instructional Technology Center, 1910 University Drive,

Boise State University, Boise, ID 83720, Contact: Kenny Osborne, 208–526–0805

October 26, 1995—Tracy, CA

6:00–9:00 p.m. pacific time, Tracy Community Center, 300 E. 10th Street, Tracy, CA 95378, Contact: Dave Christy, 510–637–1812

October 26, 1995—Argonne, IL

5:00–9:00 p.m. central time, 6:00–10:00 eastern time, 9800 South Cass Avenue, Building 201, Room 3A, Argonne, IL 60439, Contact: Mary Jo Acke, 708–252–8796

October 26, 1995—Upton, NY

6:00–10:00 p.m. eastern time, Brookhaven National Laboratory, 12 Bell Avenue, Building 475B, Room 36, Upton, NY 11973, Contact: Mary Jo Acke, 708–252–8796

October 26, 1995—Fernald, OH

2:00–4:00 eastern time, Fernald Environmental Management Project, 7400 Wiley Road, Safety and Health Building, Room 111, Fernald, OH 45030, Contact: Mike Jacobs, 513–648–3043

November 1, 1995—Albuquerque, NM

6:00–10:00 mountain time, 8:00–12:00 eastern time, University of New Mexico, Continuing Education Conferencing Center, 1634 University Blvd. NE., Albuquerque, NM 87131, Contact: Tracy Longhead, 505–845–5977

November 2, 1995—Las Vegas, NV

6:00–9:00 pacific time, 9:00–12:00 eastern time, DOE/NV Auditorium, 2753 S. Highland, Room 200–1239, Las Vegas, NV 89109, Contact: Angela Colarusso, 702–295–1218

November 7, 1995—Arvada, CO

4:30–8:30 p.m. mountain time, 6:30–10:30 p.m. eastern time, Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO 80003, Contact: Miriane Anderson, 303–966–6088

November 9, 1995—Richland, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Federal Building, 825 Jadwin Avenue, Room 784–B, Richland, WA 99352, Contact: Jon Yerxa, 509–376–9628

November 9, 1995—Lacey, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Department of Information Services, Washington Interactive Television, 710 Sleater-Kinney Road, SE., Suite Q, Lacey, WA 98504, Contact: Jon Yerxa, 509–376–9628

November 9, 1995—Pasco, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Education Service, District 123, 124 South 4th St, Pasco, WA 99301, Contact: Jon Yerxa, 509–376–9628

November 9, 1995—Seattle, WA

6:00–9:00 pacific time, 9:00–12:00 eastern time, Seattle Community College, 1500 Harvard, Seattle, WA 98122, Contact: Jon Yerxa, 509–376–9628

November 14, 1995—Portsmouth, OH

7:00–10:00 p.m. eastern time, Shawnee State University, Flohr Lecture Hall, Library Bldg., 940 Second Street, Portsmouth, OH 45662, Contact: Sandy Childers, 614–897–2336

November 14, 1995—Paducah, KY

6:00–9:00 p.m. central time, 7:00–10:00 p.m. eastern time, Paducah Community College, Resource Center at Paducah, Information Age Park, 2000 McCraken Drive, Paducah, KY 42001, Contact: Dennis Hill, 502–441–5194

List of Public Reading Rooms where the draft PEIS and supporting technical documents are available.

Berkeley Public Library, Kittredge and Shattuck, Berkeley, CA 94704, 510–644–6648, M–Th 10 a.m.–9 p.m.; F, Sat 10 a.m.–6p.m.; Sun 1 p.m.–5p.m.

Lawrence Livermore Eastgate Visitors Center, Greenville Road, Livermore, CA 94550, 510–424–4819, M–F 8 a.m.–5p.m.

DOE Reading Room, 1301 Clay Street, Room 700N, Oakland, CA 94612, 510–637–1762, M–F 9 a.m.–4p.m.

Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523, 510–646–6457, M, T, Th 12 p.m.–8p.m.; W 10 a.m.–6p.m.; F, Sat 10 a.m.–6p.m.

Department of Toxic Substances Control, Lincoln Plaza Building, 400 P Street, 4th Floor, Sacramento, CA 95814, 916–324–5898, M–F 7:30 a.m.–4:30 p.m.

Simi Valley Public Library, Tapo Canyon Road, Simi Valley, CA 93063, 805–526–1735, M–Th 10 a.m.–8p.m.; Sat 10 a.m.–5p.m.

Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523, 510–646–6457, M, T, Th 12 p.m.–8p.m.; W 10 a.m.–6p.m.; F, Sat 10 a.m.–6p.m.

Standley Lake Library, 8485 Kipling Street, Arvada, CO 80005, 303–456–0806, M–Th 10 a.m.–9p.m.; F 10 a.m.–5p.m.; Sun 12 p.m.–5p.m.

U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2405, 303–293–1807, M–F 7:30 a.m.–4:30 p.m.

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive, South, Denver, CO 80222–2405, 303–692–3398, M–F 8 a.m.–5p.m.

Government Reference Center, Mesa County Public Library, 530 Grand Avenue, Grand Junction, CO 81501, 970–241–5251, M–Th 9 a.m.–9 p.m.; F, Sat 9 a.m.–5p.m.

Rocky Flats Environmental Technology Site Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, 303–469–4435, T, Th 12:30 p.m.–4:30 p.m.

Rocky Flats Citizens Advisory Board, 9035 Wadsworth Parkway, Suite 2250, Westminister, CO 80021, 303–420–7855, M–F 8:30 a.m.–5p.m.

Windsor Public Library, 323 Broad Street, Windsor, CT 06095, 203–285–1910, M–Th 9 a.m.–9 p.m.; F 9 a.m.–5p.m.; Sat 9 a.m.–1p.m.

U.S. Department of Energy, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–8062, M–F 9 a.m.–4p.m.

Center for Environmental Management Information, 470 L'Enfant Plaza East, SW., Suite 7112, Washington, DC 20024, 202–863–5090, M–F 9 a.m.–7 p.m.

Pinellas Park Public Library, 7770 52nd Street, North, Pinellas Park, FL 34665, 813–541–0718, M–Th 9 a.m.–8:30p.m.; F, Sat 9 a.m.–5p.m.; Sun 1 p.m.–5p.m.

Atlanta Fulton Public Library, Govt. Documents Section, 2nd Floor, 1 Margaret Mitchell Square, Atlanta, GA 30303, 404–730–1706, M–Th 9 a.m.–9p.m.; F, Sat 9 a.m.–6p.m.; Sun 2 p.m.–6p.m.

Main Branch, Chatham Effingham Liberty Regional Library, 2002 Bull Street, Savannah, GA 31499–4301, 912–652–3600, M–Th 9 a.m.–9p.m.; F 9 a.m.–6p.m.; Sat 10 a.m.–6p.m.; Sun 2 p.m.–6p.m.

Reese Library, Reference Section, Augusta College, 2500 Walton Way, Augusta, GA 30904–2200, 706–737–1744, M-Th 7:45am-10:30pm; F 7:45am-5pm; Sat 9am-5pm; Sun 1:30pm-9:30pm

Pearl City Public Library, 1138 Waimano Home Road, Pearl City, HI 96782, 808–453–6566, M,T 10am-8pm; W,Th,Sat 10am-8pm; Sun 1pm-5pm

Pearl Harbor Naval Base Library, Code 90L, 1514 Makalapa Drive, Pearl Harbor, HI 96860–5350, 808–471–8238, T-Th 10am-7pm; F,Sat 9am-5pm; Sun 1pm-5pm

Ames Public Library, Information Services Department, 515 Douglas Avenue, Ames, IA 50010, 515–233–2115, M-Th 9am-9pm; F,Sat 9am-6pm; Sun 1pm-5pm

Boise Public Library, Government Documents Section, 715 S. Capitol Boulevard, Boise, ID 83702, 208–384–4023, M,F 10am-6pm; T-Th 10am-9pm; Sat 12pm-5pm; Sun 12pm-5pm

State Library, 325 West State Street, Boise, ID 83702, 208–334–2152, M-F 9am-5pm

INEL Boise Outreach Office, 816 W. Bannock, Suite 306, Boise, ID 83702, 208–334–9572, M-F 7:30am-5pm

City of Burley Public Library, 1300 Miller Avenue, Burley, ID 83318–1729, 208–678–7708, M-Th 11am-7pm; F,Sat 11am-6pm

City of Emmett Public Library, 275 South Hayes, Emmett, ID 83617, 208–365–6057, M,W 12pm-9pm; T,Th,F 12pm-5pm

Shoshone-Bannock Library, Bannock and Pima Streets, HRDC Building, Fort Hall, ID 83203, 208–238–3882, M-F 8am-5pm

Consolidated Free Library, Hayden Branch, 8385 North Government Way, Hayden Lake, ID 83835, 208–772–5612, M-Th 10am-8pm; F,Sat 10am-5pm; Sun 12pm-5pm

INEL Library, 900 North Skyline Drive, Idaho Falls, ID 83402, 208–528–2600, M-F 8am-5pm

INEL Technical Library, DOE Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415–2300, 208–526–1185, M-F 8am-5pm

Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID 83402, 208–529–1462, M-Th 9am-9pm; F,Sat 9am-5:30pm; Sun 1:30pm-5:30pm

Clearwater Memorial Public Library, 402 Michigan Avenue, Orofino, ID 83544, 208–476–3411, M,F 10am-5:30pm; T-Th 10am-8pm, Sat 10am-3pm

Idaho State University Library, Documents Department, 10th & East Lovejoy,

Pocatello, ID 83209–8089, 208–236–2907, M-F 7:30am-9pm; Sun 1pm-9pm
Argonne National Laboratory (West)—Idaho, Technical Library INEL Site, Scoville, ID 83415, 208–533–7237, M-F 8am-4:30pm
Twin Falls Public Library, 434 Second Street, East, Twin Falls, ID 83301, 208–733–2964, M,F,Sat 10am-6pm; T-Th 10am-9pm
Ames Public Library, Information Services Department, 515 Douglas Avenue, Ames, IA 50010, 515–233–2115, M-Th 9am-9pm; F,Sat 9am-6pm; Sun 1pm-5pm
Bedford Park Public Library, 7816 West 65th Place, Bedford Park, IL 60510, 708–458–6826, M-Th 9am-8pm; F 9am-5pm; Sat 9am-4pm
Bridgeview Public Library, 7840 West 79th Street, Bridgeview, IL 60455, 708–458–2880, M-Th 9am-8pm; F,Sat 9am-5pm; Sun 10am-12pm
U.S. DOE Public Document Room, Document Department, University Library, 3rd Floor Center, University of Illinois at Chicago, 801 S. Morgan Street, Chicago, IL 60607, 312–996–5129, M-Th 8am-10pm; F 8am-7pm; Sat 10am-5pm; Sun 1pm-9pm
Lemont Public Library, 810 Porter Street, Lemont, IL 60439, 708–257–6541, M-Th 9am-8pm; F 9am-6pm; Sat 9am-4pm; Sun 1pm-5pm
DOE Environmental Information Center, 175 Freedom Boulevard, Kevil, KY 42053, 502/462–2550, M-F 8am-5pm
Rice Public Library, 8 Wentworth Street, Kittery, ME 03904, 207–439–1553, M,T,W,F 10am-5pm; Th 10am-8pm; Sat 10am-4pm
Blue Ridge Branch, Mid-Continent Public Library, 9253 Blue Ridge, Kansas City, MO 64138, 816–761–3382, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm
Columbia Public Library, 100 West Broadway, Columbia, MO 65203, 314–443–3161, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm; Sun 1pm-5pm
Portsmouth Public Library, 8 Islington Street, Portsmouth, NH 03801, 603–427–1540, M-Th 9am-9pm; F 9am-5:30pm; Sat 9am-5pm
Maywood DOE Public Information Center, 55 West Pleasant Avenue, Maywood, NJ 07607, 201–843–7466, M,W 9am-4pm
Plainsboro Public Library, 641 Plainsboro Road, Plainsboro, NJ 08536, 609–275–2898, M,F 9am-5:30pm; T-Th 9am-8:30pm; Sat 9am-3pm; Sun 1pm-5pm
Albuquerque Operations DOE Reading Room, Kirtland Air Force Base, National Atomic Museum, 20358 Wyoming Boulevard, SE, Albuquerque, NM 87117, 505–845–6670, M-F 9am-5pm
Zimmermann Library, Government Publications Department, University of New Mexico, Albuquerque, NM 87131, 505–277–5441, M-Th 8am-9pm; F 8am-5pm; Sat,Sun 12pm-4pm
Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, NM 88220, 505–885–0731, M-Th 10am-8pm; F,Sat 10am-6pm; Sun 2pm-6pm
Los Alamos National Laboratory Reading Room, Museum Park Complex, 1350 Central, Suite 101, Los Alamos, NM 87544, 505–665–2127, M-F 9am-5pm
New Mexico State Library, 325 Don Gasper, Santa Fe, NM 87503, 505–827–3805, M-F 9am-5pm
Carson City Public Library, 900 North Roop Street, Carson City, NV 89701, 702–887–2247, M,F,Sat 10am-6pm; T-Th 10am-9pm
Nevada State Library and Archives, 100 Stewart Street, Capitol Complex, Carson City, NV 89710, 702–687–8327, M-F 8am-5pm
Nevada Operations Office Public Reading Facility, 2621 Losee Road, North Las Vegas, NV 89030, 702–295–1623, M-F 7:30am-4:30pm
Buffalo and Erie County Public Library, Science and Technology Department, Lafayette Square, Buffalo, NY 14203, 716–858–7100, M,T,W,F,Sat 8:30am-6pm; Th 8:30am-8pm; After October 1, Sun 1pm-5pm
William K. Sanford Town Library, 629 Albany-Shaker Road, Loudenville, NY 12211, 518–458–9274, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm; Sun 1pm-5pm
Town of Brookhaven, Public Information Office, 3233 Route 112, Medford, NY 11763, 516–451–6260, M-F 9am-4:30pm
Longwood Public Library, 800 Middle Country Road, Middle Island, NY 11953, 516–924–6400, M-F 9:30am-9pm; Sat 9:30am-5pm; Sun 1pm-5pm
EPA Emergency and Remedial Response Division, 290 Broadway, 18th Floor, New York, NY 10007–1866, 212–637–4296, M-F 9am-5pm
Olean Public Library, 134 N. 2nd Street, Olean, NY 14760, 716–372–0200, M-Th 9am-9pm; F 9am-6pm; Sat 10am-5pm
Saratoga Springs Library, 49 Henry Street, Saratoga Springs, NY 12866–3224, 518–584–7860, M-Th 9am-9pm; F 9am-6pm; Sat 9am-5pm; Sun 1pm-5pm
Schenectady County Public Library, Main Branch, 99 Clinton Street, Schenectady, NY 12305–2083, 518–388–4524, M-Th 9am-9pm; F,Sat 9am-5pm; After October 1, Sun 1pm-5pm
Mastics-Moriches-Shirley Community Library, 425 William Floyd Parkway, Shirley, NY 11967, 516–399–1511, M-F 8:30am-9pm; Sat, Sun 9am-5pm
Hulbert Library of the Town of Concord, 18 Chapel Street, Springville, NY 14141, 716–592–7742, M 2pm-9pm; T 2pm-7pm; Th 10am-12pm and 2pm-9pm; F 1pm-8pm; Sat 10am-12pm
Brookhaven National Laboratory, Research Library, Building 477A, Upton, NY 11973, 516–282–3489, M-F 8:30am-9pm; Sat,Sun 9am-5pm
West Valley Demonstration Project, DOE Public Reading Area, 9030 Route 219, West Valley, NY 14171, 716–942–2021, M-F 7:30am-4pm
Columbus Metropolitan Library, Main Branch, 96 S. Grant Avenue, Columbus, OH 43215, 614–645–2710, M-Th 9am-9pm; F, Sat 9am-6pm
Northside Branch Library, 1423 N. High Street, Columbus, OH 43201, 614–645–2110, M-Th 10am-8pm; F,Sat 10am-6pm
State Library of Ohio, 65 S. Front Street, Columbus, OH 43215, 614–644–6952, M-Th 8am-5pm; F 9am-5pm
West Jefferson Public Library, 270 Lilly Chapel Road, West Jefferson, OH 43162, 614–879–8448, M-F 10am-8pm; Sat 10am-2pm
Public Environmental Information Center, 10845 Hamilton Cleves Highway, Harrison, OH 45030, 513–738–0164, M and Th 9am-7pm; T,W,F 9am-4:30pm; Sat 9am-1pm
Miamisburg Senior Adult Center, Public Reading Room, 305 Central Avenue, Miamisburg, OH 45343, 513–847–6670, M 12pm–8pm; T 8:30am–1:30pm, 4pm–8pm; W 12pm–8pm; Th 8:30am–1:30, 4pm–8pm; F 1:30pm–4:30pm
DOE Environmental Information Center, 505 West Emmitt Avenue, Suite 3, Waverly, OH 45690, 614–947–5093, M,T,W,F 10am–4pm; Th 9am–12noon
Portland State University, Branford Price Millar Library, SW Harrison and Park, Portland, OR 97201, 503–725–3690, M F 8am–10pm; Sat 10am–10pm; Sun 11am–10pm
Carnegie Library of Pittsburgh, Science and Technology Department, 4400 Forbes Avenue, Pittsburgh, PA 15213, 412–622–3141, M,T,W,F 9am–9pm; Th,Sat 9am–5:30pm; After October 1, Sunday 1pm–5pm
Charleston County Library, 404 King Street, Charleston, SC 29403, 803–723–1645, M Th 9:30am–9pm; F,Sat 9:30am–6pm; Sun 2pm–5pm
University of South Carolina Aiken, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801, 803–641–3465, M,T,W,F 8am–5pm; Th 8am–9pm
South Carolina State Library, 1500 Senate Street, Columbia, SC 29201, 803–734–8666, M F 8:15am–5:30pm; Sat 9am–1pm
Lawson McGhee Public Library, 500 West Church Avenue, Knoxville, TN 37902, 615–544–5700, M Th 9am–8:30pm; F 9am–5:30; Sat,Sun 1pm–5pm
DOE Environmental Information Resource Center, 105 Broadway, Oak Ridge, TN 37830, 615–241–3314, M,W,F 8am–5pm; T,Th 8am–7pm; Sat 9am–1pm
DOE Public Reading Room, Oak Ridge Operations Office, 55 Jefferson Circle, Room 112B, Oak Ridge, TN 37831, 615–576–1216, M F 8am–11:30pm; and 12pm–4:30pm
Memphis/Shelby County Public Library and Information Center, 1850 Peabody Avenue, Memphis, TN 38104, 901–435–8800, M Th 9am–9pm; F 9am–6pm; Sat 9am–5pm; Sun 1pm–5pm
Rockwood Public Library, 117 North Front Avenue, Rockwood, TN 37854, 615–354–1281, M,W,F,Sat 10am–5pm; T,Th 10am–8pm
Amarillo College Library, Lynn Library, DOE Reading Room, 2201 S. Washington, Amarillo, TX 79109, 806–371–5419, M Th 7:15am–10pm; F 7:15am–12:30pm; Sat 8:30am–12:30pm; Sun 2pm–6pm
Houston Public Library, 500 McKinney, Texas Room, Houston, TX 77002, 713–247–1664, M Sat 9am–6pm
Carson County Library, Public Reading Room, 401 Main Street, Panhandle, TX 79060, 806–537–3742, M 9am–7pm; T F 9am–5pm
Portsmouth Public Library, 601 Court Street, Portsmouth, VA 23704, 804–393–8501, M F 9am–9pm; Sat 9am–5pm
Kitsap Regional Library, 1301 Sylvan Way, Bremerton, WA 98310, 206–405–9119, M Th 9:30am–9pm; F 9:30am–5:30pm; Sat 9:30am–5:30pm; Sun 12:30pm–5:30pm
Department of Ecology, Washington State Nuclear and Mixed Waste Library, 300

Desmond Drive, SE., Lacey, WA 98503, 206–407–7097, M F 8am–5pm
U.S. Department of Energy Public Reading Room, 100 Sprout Road, Room 130W, Richland, WA 99352, 509–376–8583, M F 10am–5pm
U.S. Environmental Protection Agency, 1200 6th Avenue, HW–070, Seattle, WA 98101, 206–553–1388, M F 8:30am–4:30pm
University of Washington, Government Publications, Suzzallo Library, Seattle WA 98195–2900, 206–685–9855, M Th 9am–8pm; F 9am–5pm; Sat 9am–5pm
Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258, 509–328–4220 ext. 3829, M Th 8am–12am; F 8am–9pm; Sat 9am–9pm; Sun 11am–12am

Issued in Washington, D. C., September 13, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–23492 Filed 9–21–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Fusion Energy Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Fusion Energy Advisory Committee.

DATES: Thursday, October 12, 1995, 9:00 a.m. to 6:00 p.m.; and Friday, October 13, 1995, 9:00 a.m. to 6:00 p.m.

ADDRESSES: Renaissance Washington D.C. Hotel, 999 Ninth Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, III, Executive Assistant, Office of Fusion Energy, ER–50, GTN, U.S. Department of Energy, Washington, D.C. 20585, Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

The Committee will receive a new charge from the Department and will begin the process of organizing itself to complete the necessary work.

Tentative Agenda

Thursday, October 12, 1995, and Friday, October 13, 1995

Executive session for FEAC members
Presentation of new FEAC members
Presentation of new charge to FEAC
Presentation of the President's Committee of Advisors on Science & Technology (PCAST) results
Presentation on FY 1996 Budget Presentation and Discussion on Proposed new Strategy
Public Comments (10 minute rule)

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 Albert Opdenaker at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, I–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on September 19, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–23568 Filed 9–21–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–751–000]

High Island Offshore System; Notice of Application

September 18, 1995.

Take notice that on September 13, 1995, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–751–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service currently being rendered to Transcontinental Gas Pipe Line Corporation (Transco) which was authorized in Docket No. CP75–104, *et al.*, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, HIOS proposes to abandon firm service rendered under its Rate Schedule T–16 to Transco by exercising its option to terminate the related service agreement upon expiration of the primary term.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for HIOS to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23512 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–748–000]

Natural Gas Pipeline Company of America; Notice of Application

September 18, 1995.

Take notice that on September 11, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–748–000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon an

interruptible natural gas transportation service for South Jersey Exploration Company (SJEX), a producer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon an interruptible transportation service authorized in Natural's Docket No. CP78–89, as amended, and performed under Natural's Rate Schedule X–98. Natural further states that under the arrangement, dated September 30, 1977, SJEX made available up to 5,000 Mcf of natural gas per day to Natural in Nacogdoches County, Texas via a joint venture gathering line to Natural in Nacogdoches County, Texas, and Natural redelivered an equivalent volume of natural gas for the account of SJEX to Transcontinental Gas Pipe Line Corporation (Transco) at the outlet of Mobil Oil Corporation's Cameron Gas Processing Plant in Cameron Parish, Louisiana, for further transportation and ultimate distribution to certain of Transco's customers or their producing affiliates.

Natural indicates that it had an option, which Natural exercised, to purchase up to ten percent of the total amount of gas it received in Nacogdoches County, Texas for the account of SJEX. Natural also indicates that SJEX sold a part of such gas to Natural in Docket No. CS76–818. It is also indicated that the gas that Natural was transporting for SJEX was gas that was not all owned by SJEX as SJEX was also acting as agent for six other companies. It is further indicated that the six other companies and the docket numbers regarding their sales to Natural were Delmarva Energy Corporation in Docket No. CS76–1086, Dover Exploration Company in Docket No. CI77–34, NCNG Exploration Corporation in Docket No. CS77–39, Piedmont Exploration Company, Inc. in Docket No. CS76–1125, Rockingham Exploration Company in Docket No. CS 77–339, Tar Heel Energy Corporation in Docket No.CS76–982, and U.G.C. Energy Corporation in Docket No. CS77–464.

Natural states that by a letter of South Jersey Industries, Inc. (SJI)[1] dated July 20, 1995, Natural was notified that its transportation service for SJEX was no longer required. Therefore, Natural requests authority to abandon its transportation service for SJEX under the agreement.

[1] Natural indicates that SJI is the parent company of South Jersey Gas Company (South Jersey). Natural states that SJEX was the producing affiliate of South Jersey. It is further indicated that SJEX dissolved in 1992.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it 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 to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23511 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–710–000, et al.]

Southern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP95–710–000]

Take notice that on August 25, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP95–710–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale certain gas supply facilities in Knoxo Field, Walthall County, Mississippi, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern proposes to abandon by sale two receiving stations and associated 6-inch and 4-inch supply lines in the Knoxo Field. The facilities were constructed in the 1960's to connect gas supplies to Southern's system. Because of decreased production in the field, the facilities are no longer economical to maintain, according to Southern. An agreement has been entered with the operator of the upstream wellhead production facilities J.R. Pounds, Inc., to acquire the facilities. No impact on Southern's system capacity or its customers would result.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation and Texas Eastern Transmission Corporation

[Docket No. CP95–668–001]

Take notice that on September 8, 1995, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, collectively referred to as Applicants, filed a joint amended application in Docket No. CP95–668–001 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On August 7, 1995, in Docket No. CP95–668–000, Applicants filed an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon certain facilities at the Jeannette Compressor Station and a certificate of public convenience to add horsepower at the South Oakford Compressor Station. Applicants also proposed to install two new, parallel storage pipelines consisting of 3,158 feet of 30-inch storage suction pipe and 3,158 feet of 20-inch storage discharge pipe. Applicants state that updated engineering studies have indicated that the 20-inch storage discharge pipe may be replaced with the same length of 16-inch pipe at a cost savings. Applicants therefore propose to install a 16-inch storage discharge pipe in lieu of the 20-inch pipe.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–722–000]

Take notice that on August 31, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–722–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service under its Rate Schedule X–99 with Equitable Gas Company (Equitable), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that, under the exchange, Columbia delivered up to 1,000 Mcf/d of gas to Equitable in Braxton County, and up to 1,000 Mcf/d of gas in Upshur County, West Virginia. Equitable redelivered equivalent volumes, received at the above points, in Wetzel County West Virginia. This was accomplished by reducing volumes which Columbia delivered to Equitable in Wetzel County, West Virginia. It is stated that the service was on thermally equivalent basis, and therefore there was no charge, however any imbalances were treated as transportation volumes and an appropriate rate was charged the party receiving the benefit. It is stated that the service is no longer required, since such have been terminated and alternative service has been offered Equitable under a Part 284 Firm Transportation Rate Schedule.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Carnegie Interstate Pipeline Company

[Docket No. CP95–731–000]

Take notice that on September 5, 1995, Carnegie Interstate Pipeline Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP95–731–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point to an end user, Columbia Gas of Pennsylvania, Inc. (Columbia Gas), under Carnegie's blanket certificate issued in Docket No. CP88–248–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Carnegie proposes to construct and operate a new delivery point to an end user, Columbia Gas, in Fayette County, Pennsylvania, in order to provide up to 600,000 Mcf annually, under its Rate Schedules FTS and ITS.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–737–000]

Take notice that on September 7, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP95–737–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain transportation services which were authorized in Docket Nos. CP80–311–000 et al, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon the firm transportation of up to 15,000 Mcf of gas per day, for Transco under Rate Schedule X–132. Transco proposes to abandon the firm transportation of up to 40,000 Mcf per day, for Texas Eastern under Rate Schedule X–129. Texas Eastern and Transco state that pursuant to their August 22, 1995 Settlement Agreement, they have agreed to terminate the above rate schedules effective September 1, 1995. Texas Eastern and Transco also mention that their Settlement Agreement provides for Texas Eastern making a lump sum payment of an exit fee for demand charges owed through March 14, 1996. Texas Eastern and Transco assert that they do not propose to abandon any facilities.

Comment date: October 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP95–749–000]

Take notice that on September 11, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP95–749–000 pursuant to Sections 157.205, 157.211 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for approval to abandon certain facilities and operations at the Enumclaw Meter Station in King County, Washington, and to construct and operate modified replacement facilities at the Enumclaw Meter to more efficiently accommodate existing firm maximum daily delivery obligations to the City of Enumclaw (Enumclaw) and the City of Buckley, Washington; authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to partially abandon facilities and operations at the existing Enumclaw Meter Station by replacing one existing 4-inch orifice meter with one new 6-inch turbine meter and appurtenances to more efficiently accommodate existing fluctuation of the flow rates. Northwest also proposes to disconnect the recorder from the second 4-inch orifice meter and convert the meter run into a by-pass line. Northwest states that it plans to install a 4-inch filter upstream of the new 6-inch turbine meter to decrease flow from approximately 7,333 Dth per day to approximately 6,753 Dth per day at the contractual delivery pressure of 150. Northwest states that the maximum design capacity of the meter station will remain unchanged, since it is limited by the existing regulators to 6,652 Dth per day at 150 psig. The estimated cost of modifying the facilities at the Enumclaw Meter Station would be $81,870. Northwest states that this expenditure is necessary to allow more efficient daily delivery obligations and that Northwest will not require any cost reimbursement from Enumclaw.

Comment date: October 30, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23542 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–754–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

September 18, 1995.

Take notice that on September 14, 1995, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed a prior notice request with the Commission in Docket No. CP95–754–000 pursuant to Sections 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon certain pipeline facilities in Caddo Parish, Louisiana, under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.* pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

NGT proposes to abandon 14,627 feet of inactive 4-inch diameter pipe, an inactive 1-inch tap, and metering facilities on its Line G in Caddo Parish. NGT states that it no longer needs these inactive facilities, which were installed in 1950 at pipeline station no. 6 + 90, to serve a domestic customer served by its affiliate, Arkla Gas Company (Arkla). Arkla notified NGT via a letter dated June 14, 1995, that it concurs with NGT's abandonment of these facilities. NGT states that it would abandon the pipe and tap in place and remove all above ground metering facilities. NGT also states that it would cost approximately $29,676 to abandon these facilities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23513 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–37–003]

Texas-New Mexico Power Company and Texas Generating Company II; Notice of Amended Application

September 18, 1995.

Take notice that on September 18, 1995, Texas-New Mexico Power Company (TNP) filed an amendment to the application submitted by TNP and Texas Generating Company II (TGC II) in Docket No. ES95–37–000, *et al.* The amendment deleted the proposal that TGC II be the principal obligor of borrowings under a proposed Amended Credit Facility and proposes that TNP be the obligor of borrowings under the Amended Credit Facility.

The application was amended as follows:

(1) Subparagraph (1) of Paragraph (e) on page 2 of the referenced application is amended by deleting the fourth sentence in its entirety and substituting in its place the following sentence: ''TNP will be the obligor under the Amended Credit Facility.''

(2) Subparagraph (7) of Paragraph (e) on page 5 of the referenced application is amended by deleting the second sentence after the chart in its entirety and substituting in its place the following sentence: ''Of all the proposals submitted to TNP, the Amended Credit Facility secured by the New Bonds will provide TNP with the lowest cost of money and the greatest net proceeds.''

(3) Paragraph (f) on page 6 of the referenced application is amended by deleting the second sentence in its entirety.

(4) Paragraph (f) on page 6 of the referenced application is further amended by deleting the third sentence in its entirety and substituting in its place the following sentence: ''TNP will be able to borrow and prepay funds on one to three days' notice with interest determined pursuant to TNP's election between a LIBOR rate and an alternate base or prime rate.''

(5) Paragraph (f) on page 6 of the referenced application is further amended by deleting the last sentence in its entirety.

(6) Subparagraph (1)(ii) of Paragraph (g) on page 6 of the referenced application is amended by deleting the first sentence in its entirety and substituting in its place the following sentence: ''Each syndicate bank will receive a commitment fee at closing, the amount of which will depend on the amount that each bank commits to loan to TNP.''

(7) Subparagraph (2) of Paragraph (h) on page 9 of the referenced application is amended by deleting the first sentence in its entirety and substituting in its place the following sentence: ''At closing, TNP will draw on the Amended Credit Facility to repay outstanding indebtedness under the Existing Credit Facility.''

(8) Subparagraph (3) of Paragraph (h) on page 10 of the referenced application is amended by deleting the first sentence in its entirety and substituting in its place the following sentence: ''In addition to repaying Existing Credit Facility borrowings and other long-term debt, TNP expects Amended Credit Facility funds to be used for general working capital on an ongoing basis.''

(9) Subparagraph (2) of Paragraph (j) on page 11 of the referenced application is amended by deleting the first two sentences in their entirety and substituting in their places the following sentences:

''Approval of the Amended Credit Facility will enable TNP to borrow and repay funds as appropriate to manage normal fluctuations in cash flow experienced by a seasonal peaking utility. Enhanced flexibility in the use of proceeds under the New Credit Facility will also enable TNP to avoid arranging permanent financing before certain unfavorable conditions are removed.''

(10) Paragraph (k) on page 12 of the referenced application is amended by deleting the first two sentences in their entirety and substituting in their places the following sentences:

''The Amended Credit Facility is expected to require that TNP maintain a minimum ratio of earnings before interest and taxes to interest expense ranging from 1.2 from closing through June 30, 1996, to 1.5 from July 1, 1999, until the Amended Credit Facility is repaid. TNP must also maintain a maximum ratio of debt to capitalization ranging from 77 percent from closing through June 30, 1996, to 65 percent from July 1, 1999, until the Amended Credit Facility is repaid.''

TNP and TGC II request that the Commission's order in Docket No. ES94–12–000 [1] concerning the Existing Credit Facility remain effective until closing and funding of the Amended Credit Facility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 22, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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. 95–23544 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 66 FERC ¶ 62,054 (1994).

[Docket No. CP95–723–000]

Tuscarora Gas Transmission Company; Notice of Request Under Blanket Authorization

September 18, 1995.

Take notice that on August 31, 1995, Tuscarora Gas Transmission Company (Tuscarora), 6100 Neil Road, P.O. Box 30057, Reno, Nevada 89520–3057 filed in Docket No. CP95–723–000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new tap and meter station in Washoe County, Nevada, to be known as the La Posada Meter Site, for the delivery of gas to an existing customer, Sierra Pacific Power Company (SPPC), under the blanket certificate issued in Docket No. CP93–685–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tuscarora proposes to install an 8-inch tap and associated meter at Milepost 217.2 on its mainline in Washoe County, Nevada to establish an additional point for the delivery of natural gas to SPPC, for redelivery and resale to consumers in Reno, Nevada and environs. Tuscarora indicates that construction of the tap will enable SPPC to receive up to 12,000 MMBtu of natural gas directly into the La Posada area of its existing service area. Tuscarora asserts that the construction of this additional delivery point is consistent with Tuscarora's tariff and the total volume to be delivered to SPPC will not exceed the volume previously authorized for delivery to SPPC. Tuscarora states the projected cost of the proposed facilities is $198,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23510 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC95–21–000, et al.]

Oklahoma Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. EC95–21–000]

Take notice that on September 7, 1995, Oklahoma Gas and Electric Company (OG&E) has filed an application for an order authorizing a planned corporate reorganization.

OG&E is a corporation organized and existing under the laws of the State of Oklahoma, and is engaged in producing and selling electric energy.

OG&E proposes to reorganize by causing the creation of a holding company to be named OG&E Holding Corp. (Holding Company), which will become the owner of all the common stock of OG&E. This will be accomplished through a mandatory share acquisition and exchange following shareholder approval, whereby each outstanding share of OG&E common stock (other than shares held by persons who properly exercise their appraisal rights under Oklahoma law) will be exchanged for an outstanding share of Holding Company common stock. The preferred stock and debt obligations of OG&E will not be exchanged and will remain preferred stock and debt obligations of OG&E. Following the share acquisition and exchange, OG&E will cause all of its subsidiaries to be transferred to Holding Company. Also, immediately prior to the creation of the holding company structure, OG&E will reduce its ownership of The Arklahoma Corporation from 34% to below 5%. The principal property of The Arklahoma Corporation currently consists of a 161 kV transmission line extending 166 miles from Boudinot Tap near Tahlequah, Oklahoma, to Substation A located at Lake Catherine, Arkansas.

OG&E states that the proposed transaction is consistent with the public interest.

Comment date: October 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. ER94–1062–003]

Take notice that on September 7, 1995, Montaup Electric Company (Montaup) filed a compliance reporting showing the credit in lieu of refunds pursuant to the settlement agreement in this docket between Montaup and its nonaffiliated customers. The credit appeared on the Montaup bills for July issued on August 9, 1995.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Calpine Power Marketing, Inc.

[Docket No. ER94–1545–002]

Take notice that on September 5, 1995, Calpine Power Marketing, Inc. filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER94–1545–000. Copies of Calpine Power Marketing's informational filing are on file with the Commission and are available for public inspection.

4. Proven Alternatives, Inc.

[Docket No. ER95–473–001]

Take notice that on September 5, 1995, Proven Alternatives, Inc. filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER95–473–000. Copies of Proven Alternatives' informational filing are on file with the Commission and are available for public inspection.

5. Public Service Company of New Mexico

[Docket No. ER95–1052–000]

Take notice that on August 18, 1995, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Appalachian Power Company

[Docket No. ER95–1315–000]

Take notice that on August 28, 1995, Appalachian Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Energy Company

[Docket No. ER95–1319–000]

Take notice that on September 8, 1995, Atlantic City Electric Company (AE) filed supplemental information in the above-captioned docket.

AE served a copy of the filing on the City of Vineland, New Jersey and the New Jersey Board of Public Utilities.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power, Inc.

[Docket No. ER95–1375–000]

Take notice that on August 28, 1995, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas & Electric Company

[Docket No. ER95–1429–000]

Take notice that on August 24, 1995, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Western States Power Providers, Inc.

[Docket No. ER95–1459–000]

Take notice that on September 8, 1995, Western States Power Providers, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas & Electric Company

[Docket No. ER95–1497–000]

Take notice that on August 24, 1995, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER95–1700–000]

Take notice that on September 5, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement under Original Volume No. II, Non-Firm Transmission Tariff (Tariff) for Rainbow Energy Marketing Corp. (REMC). Boston Edison requests that the Service Agreement become effective as of November 5, 1995.

Edison states that it has served a copy of this filing on REMC and the Massachusetts Department of Public Utilities.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95–1701–000]

Take notice that on September 5, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Engelhard Power Marketing, Inc. (Engelhard) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

Engelhard also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to Engelhard.

NUSCO requests that the Service Agreement become effective September 1, 1995.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER95–1702–000]

Take notice that on September 5, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Heartland Energy Services, Inc. (Heartland) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

Heartland also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to Heartland.

NUSCO requests that the Service Agreement become effective September 1, 1995.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER95–1703–000]

Take notice that on September 5, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Energy Services and Rainbow Energy Marketing Corporation (Rainbow Energy). Entergy Services states that the TSA sets out the transmission arrangements under which the Energy Operating Companies will provide Rainbow Energy non-firm transmission service under their Transmission Service Tariff.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1704–000]

Take notice that on September 5, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this increase take effect as of August 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23543 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11243 Alaska]

Whitewater Engineering Corporation; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

September 18, 1995.

The Energy Policy Act of 1992, allows applicants to prepare their own draft environmental assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the ''applicant-prepared EA'' process. Whitewater Engineering Corporation (Whitewater) intends to prepare an EA to file with the Commission for the Power Creek Hydroelectric Project No. 11243. Whitewater will hold two public scoping meetings, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

Public Meeting

Date: Tuesday, October 10, 1995.
Place: Cordova High School's Library, 100 Fisherman's Way, Cordova, Alaska.
Time: 7:00 p.m.

Agency Meeting

Date: Thursday, October 12, 1995.
Place: New Federal Building, 222 W. 7th Avenue, Room 133, Anchorage, Alaska.
Time: 1:30 pm.

At the scoping meetings, Whitewater will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, Whitewater prepared and distributed Scoping Document 1 for this project. Copies of this scoping document can be obtained by calling Mike Prewittt of Whitewater at (206) 957–1874, or can be obtained directly at either meeting.

Site Visit

Whitewater will also conduct a site visit for this project on Wednesday, October 11, 1995. Those attending the site visit must meet in the lobby of the Old Courthouse (Old Post Office), at 612 2nd Street, in Cordova by 9:00 am. Those planning to attend the site visit must notify Whitewater at least three days prior to that date.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another NEPA scoping meeting when the application and draft EA are filed with the Commission.

Both meetings will be recorded by a stenographer, and thus will become a part of the formal record of the proceedings for this project.

Those who choose not to speak may instead submit written comments on the project. These comments should be mailed to Mike Prewitt at Whitewater's Seattle office, 1415 140th Street, #9, Bellevue, Washington 90885. All correspondence should clearly show the following caption on the first page: Scoping Comments, Power Creek Project, FERC No. 11243, Alaska.

For further information, please contact Mike Prewitt at (206) 957–1874, or Mike Strzelecki of the Commission at (202) 219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23509 Filed 9–21–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–5229–1)

Environmental Impact Statements And Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 04, 1995 Through September 08, 1995 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 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–FRC–L05213–WA Rating EO2, Rocky Reach Hydroelectric Project (FERC No. 2145). Operating License Amendment Issuance to Increase Lake Entiat Reservoir, Chelan and Douglas Counties, WA.

Summary

EPA expressed environmental objections due to potentially significant water quality, wetland and fish impacts. Additional information was requested on cumulative effects, mitigation measures and impacts on water quality, wetlands and fisheries resources.

ERP No. D–NAS–K59011–CA Rating EC2, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA.

Summary

EPA expressed environmental concerns regarding the lack of air quality mitigation measures, noise impacts to Air Force housing and dependents, and the lack of detail concerning noise mitigation.

ERP No. DS–AFS–L65183–AK Rating LO, Central Prince of Wales Ketchikan

Pulp Long-Term Timber Sale, Additional Information, Implementation, Tongass National Forest, Prince of Wales Island, AK.

Summary

EPA provided no comments and therefore has no objection to the preferred alternative as described in the EIS.

Final EISs

ERP No. F–AFS–L65238–WA Thunder Mountain Fire Recovery and Salvage Project, Implementation, Okanogan National Forest, Tonasket and Methow Valley Ranger Districts, Okanogan County, WA.

Summary

EPA had no objection to the proposed action. The final EIS has addressed EPA concerns.

ERP No. F–NPS–L64043–WA Elwha River Ecosystem Restoration, Implementation, Olympic National Park, Clallam County, WA.

Summary

EPA had no objection to the proposed action.

ERP No. FS–RUS–E08017–FL Hardee Unit 3 440 Megawatt (MW) Natural Gas and Oil Fired Combined Cycle Electric Power Station, Construction and Operation, Approval, Funding and NPDES Permit, Hardee County, FL.

Summary

EPA expressed environmental concerns regarding groundwater and environmental justice.

Dated: September 19, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–23585 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5301–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), notice is hereby given of a proposed settlement agreement in the following case: *OZ Technology* v. *Environmental Protection Agency,* No. 95–0289 (D. Id.). This action was filed pursuant to 28 U.S.C. 1331 and 1361 and 5 U.S.C. 701–706, seeking a preliminary injunction. At issue is the alleged failure of EPA to respond to petitions filed by OZ Technology pursuant to section 612(d) of the CAA, 42 U.S.C. 7671k(d). In addition, OZ Technology sought relief from ''misinformation and misstatements'' allegedly communicated by EPA regarding OZ Technology's products.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Sonja Lee, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (703) 235–5330. Written comments should be sent to Jan M. Tierney, at the above address and must be submitted on or before October 23, 1995.

Dated: September 12, 1995.

Jonathan Z. Cannon,

Assistant Administrator (General Counsel).

[FR Doc. 95–23572 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5301–4]

Access to Confidential Business Information by Armstrong Data Services, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has authorized Armstrong Data Services, Inc. (ADSI) of Vienna, Virginia who is the prime contractor, and Labat-Anderson, Inc. (LAI) of Arlington, Virginia who is the subcontractor, for access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted through September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Irvin Weiss, Environmental Protection Agency, Office of Information Resources Management, Management Evaluation Staff (3401), 401 M Street, SW., Washington, DC 20460. Telephone (202) 260–9388.

SUPPLEMENTARY INFORMATION: Under EPA Contract Number 68–W5–0024, ADSI and LAI provide agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, ADSI and LAI employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, filming, scanning, etc. The documents to which ADSI and LAI have access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that ADSI and LAI require access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

ADSI and LAI are required by contract to protect confidential information. When their need for the information is completed, ADSI and LAI will return them to EPA.

Dated: September 15, 1995.

Sallyanne Harper,

Acting Assistant Administrator for Administration and Resource Management.

[FR Doc. 95–23575 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5228–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 11, 1995 Through September 15, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950422, DRAFT EIS, COE, CA, Delta Wetlands Project, Construction and Operation, Water Storage Project on Four Islands in the Sacramento-San Joaquin Delta, Approval of Permits, San Joaquin and Contra Costa Counties, CA, Due: November 21, 1995, Contact: Jim Monroe (916) 557–5266.

EIS No. 950423, DRAFT SUPPLEMENT, FHW, SC, Mark Clark Expressway Facility Construction, Sam Rittenberg Boulevard (SC–7) to Folly Road (SC–171) crossing the Stono River, Updated Information concerning the last portion of the Charleston Inner Belt Freeway, Funding and COE Sections 404 and 10 Permits and US Coast Guard Bridge Permit Issuance, Charleston County, SC, Due: November 06, 1996, Contact: Kenneth Myers (803) 253–3881.

EIS No. 950424, DRAFT EIS, AFS, MT, Mormon Ridge Winter Range Peak Ecosystem Restoration, Implementation, Lolo National Forest, Missoula Ranger District, Missoula County, MT, Due: November 06, 1995, Contact: Andy Kulla (406) 329–3962.

EIS No. 950425, DRAFT EIS, BLM, NV, Round Mountain Mine Mill and Tailings Facility, Construction and Operation for the Smoke Valley Operation, Plan of Operations Amendment, Nye County, NV, Due: November 22, 1995, Contact: Christopher Stubb (702) 635–4000.

EIS No. 950426, FINAL EIS, AFS, UT, Brian Head Recovery Project, Timber Harvest, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Contact: Ronald S. Wilson (801) 865–3200.

ADDITIONAL PUBLIC REVIEW NOT NECESSARY—The Brian Head DEIS was reviewed by the public for a 45 day period and comments have been included in the FEIS. The FEIS and Decision will not require additional public review as described in Paragraph 6 of the Memorandum of Agreement on Timber Salvage Activities under Public Law 104–19, between the USDA, USDOI, USDOC and the USEPA.

EIS No. 950427, FINAL EIS, AFS, ID, Thunderbolt Wildfire Recovery Project, Implementation, Boise and Payette National Forests, Valley County, ID, Due: October 23, 1995, Contact: Ronn Julian (208) 382–7400.

EIS No. 950428, LEGISLATIVE DRAFT EIS, AFS, MT, Lolo National Wild and Scenic Rivers, Suitability Study for Eight Rivers for Inclusion in the National Wild and Scenic River System, Lolo National Forest, Lewis & Clark, Missoula, Powell, Ravalli and Sanders Counties, MT, Due: November 06, 1995, Contact: Suzanne Artley (406) 329–3776.

EIS No. 950429, FINAL EIS, FHW, AL, I–59/I–759 Interchange to US 11 and US 431/US 278, Construction, Funding, Etowah County, AL, Due: October 23, 1995, Contact: Joe Wilkerson (205) 223–7370.

EIS No. 950430, DRAFT EIS, COE, VA, VA–168 Battlefield Boulevard South, Construction between Peaceful Road and the North Carolina State Line, Issuance of Permits, VA, Due: November 06, 1995, Contact: Alice Allen-Grimes (804) 441–7219.

EIS No. 950431, DRAFT EIS, DOE, Programmatic EIS Waste Management, Managing Treatment, Storage and/or Disposal of Radioactive and Hazardous Waste for Five Types of Waste: Low-Level Radioactive; Low-Level Mixed; Transuranic Radioactive; High-Level Radioactive and Hazardous Waste, Sites Selection Around the United States, Due: December 21, 1995, Contact: David Hoel (202) 586–3977.

Amended Notices

EIS No. 930170, DRAFT EIS, AFS, OR, Camas Salvage Timber Sales, Restoration and Off-Highway Vehicle Trail Complex Projects, Implementation, Umatilla National Forest, North Fork John Day Ranger District, Umatilla and Union Counties, OR, Contact: Jeff Hammes (503) 427–3231.

Published FR 05–28–93—Officially Withdrawn by the Preparing Agency.

EIS No. 950306, DRAFT EIS, SFW, NV, Lahontan Valley Wetlands Water Rights Acquisition Program, Implementation, Churchill County, NV, Due: October 20, 1995, Contact: Ronald M. Anglin (702) 432–5128.

Published FR 07–21–95—Review period extended.

EIS No. 950405, DRAFT EIS, AFS, MT, Rock Creek Copper/Silver Mine Project, Construction and Operation, COE Section 404 Permit and Permits Approval, Kootenai National Forest, Sanders County, MT, Due: October 23, 1995, Contact: Paul Kaiser (406) 293–6211.

Published FR 09–8–95—Officially Withdrawn by the Preparing Agency.

Dated: September 19, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–23586 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5301–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Application Deadline for the Competition for Brownfields Economic Redevelopment Initiative Pilots''

AGENCY: Environmental Protection Agency.

ACTION: Notice of application deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will continue to accept proposals for the national Brownfields Economic Redevelopment Pilots. EPA received over 100 applications for the deadlines of March 1, 1995 and April 17, 1995; from these applications EPA was able to select 15 national pilots which were announced on July 26, 1995. EPA will select a total of twenty additional pilots in 1996 during the next two rounds of the competition: The next two upcoming deadlines for these rounds are November 17, 1995 and March 4, 1996. All applications received by March 1, 1995 and April 17, 1995—but not chosen as national pilots in the July 26, 1995 announcement—will continue to be considered by EPA during the subsequent two rounds of this competition.

To further improve the competition process, EPA has made clarifications to the Application Guidelines for Demonstration Pilots (revised edition September 1995). However, those entities which submitted applications by March 1 and April 17 will not be required to re-submit their applications. Nonetheless, EPA urges these applicants to review the clarifications and determine whether they wish to revise and resubmit their applications.

DATES: This action is effective as of December 1, 1994, and expires on March 4, 1996. All proposals must be postmarked or sent to EPA via registered or tracked mail by the expiration dates cited above.

ADDRESSES: Applications booklets can be obtained by calling the Superfund Hotline at the following numbers: Washington, DC Metro Area at 703–412–9810, Outside Washington, DC Metro at 1–800–424–9346, TDD for the Hearing Impaired at 1–800–553–7672.

Booklets may also be obtained by writing to: U.S. EPA—Brownfields Application, Superfund Document Center 5201G, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: The U.S. EPA is funding 50 two-year demonstration pilots up to $200,000 for cleaning up and redeveloping brownfields. Eighteen national pilot projects already have been selected. EPA defines brownfields as abandoned, idled or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. EPA's Brownfields Initiative is an organized commitment to help communities revitalize such properties both environmentally and economically, mitigate potential health

risks and restore economic vitality to areas where these brownfields exist.

The goal of the Brownfields Initiative is to empower states, communities and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. Experience gained from the pilots, along with partnerships and outreach activities, will provide a growing knowledge base to help direct EPA's Brownfields Initiative. EPA's Brownfields Pilots will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated efforts at the federal, state, and local levels. EPA will facilitate a coordinated federal strategy to help initiate a significant national effort to clean up and redevelop brownfields.

Cities, counties, towns, states, Territories, and Native American Tribes are all eligible to apply.

The Brownfields Economic Redevelopment Initiative is founded on the belief that ''economic development and environmental protection must go hand in hand,'' (Carol Browner, Administrator, Environmental Protection Agency, Announcing the Cleveland Brownfields Pilot on November 8, 1993.)

In order to ensure a fair selection process, panels consisting of EPA Regional and Headquarters staff, as well as other Federal Agency representatives, evaluated all of the applications. These panels assess how well the proposals met the selection criteria outlined in The Brownfields Economic Redevelopment Initiative: Application Guidelines for Demonstration Pilots. These panels' evaluations will be presented to EPA Senior Management for final selection. Proposals will be evaluated on the following criteria (a more detailed and complete set of criteria are included in the application booklet):

- Demonstrated commitment of public and private leadership to brownfields redevelopment.
- Clear delineation of how federal support will make a difference.
- Plans for effective community involvement.
- Contributions to environmental justice goals.
- Government support and technical, legal, and political capacity to complete goals.
- Clearly outlined potential sources of cleanup funding.
- Potential for national replication.
- Well-defined approach to environmental assessment.

Dated: September 14, 1995.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 95–23576 Filed 9–21–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Financial Institution Partners, L.P.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 6, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Financial Institution Partners, L.P. and Hovde Capital, Inc., both of Buffalo Grove, Illinois; to acquire an additional 15 percent, for a total of 24.9 percent, of the voting shares of North County Bancorp, Escondido, California.

Board of Governors of the Federal Reserve System, September 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23547 Filed 9–21–95; 8:45 am]

BILLING CODE 6210–01–F

NationsBank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation and its subsidiary NB Holdings Corporation, both of Charlotte, North Carolina; to merge with North Florida Bank Corporation, Madison, Florida, and thereby indirectly acquire Bank of Madison County, National Association, Madison, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. NEMO Bancshares, Inc., Madison, Missouri; to become a bank holding company by acquiring at least 67.5 percent of the voting shares of Madison-Hunnewell Bank, Madison, Missouri.

Board of Governors of the Federal Reserve System, September 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23548 Filed 9–21–95; 8:45 am]

BILLING CODE 6210–01–F

Wells Fargo & Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to engage *de novo* through an unnamed wholly-owned subsidiary in data processing and data transmission services through the ownership, installation, operation, and maintenance of automatic teller machines in the State of Texas, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 18, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23549 Filed 9–21–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 082895 AND 090895

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Jordan Industries, Inc., John D. Simms, Elmco Industries, Inc	95–2345	08/28/95
Jordan Industries, Inc., Merkle-Korff Industries, Inc., Merkle-Korff Industries, Inc	95–2346	08/28/95
New Valley Corporation, RJR Nabisco Holdings Corp., RJR Nabisco Holdings Corp	95–2397	08/28/95
Pittencrieff Communications, Inc., FMR Corp., Advanced MobileComm Southwest Corp	95–2428	08/28/95
FMR Corp., Pittencrieff Communications, Inc., Pittencrieff Communications, Inc	95–2429	08/28/95
Unitrin, Inc., Milwaukee Insurance Group, Inc., Milwaukee Insurance Group, Inc	95–2435	08/28/95
PETsMART, Inc. The Pet Food Giant, Inc., The Pet Food Giant, Inc	95–2436	08/28/95
Morgan Stanley Group Inc., Miller Anderson & Sherred, LLP, Miller Anderson & Sherred, LLP	95–2439	08/28/95
Sophus Berendsen A/S, Mayne Nickless Limited, Stanley Smith Security, Inc	95–2443	08/28/95
Argo Partnership, L.P., Kemper Corporation, Kemper Corporation	95–2453	08/28/95
Brazos Fund, L.P., Kemper Corporation, Kemper Corporation	95–2460	08/28/95
Bayer Ag, Myriad Genetics, Inc., Myriad Genetics, Inc	95–2464	08/28/95
Worms & Cie, Lafarge Coppee S.A., Coppee Industries, Inc	95–2465	08/28/95
Fibreboard Corporation, S–K–I Ltd., Bear Mountain Ltd	95–2469	08/28/95
Columbia/HCA Healthcare Corporation, Hopewell Hospital Authority, John Randolph Hospital	95–0742	08/29/95
David C. Pratt, John M. Allman, Peters Acquisition Company	95–2419	08/29/95
David C. Pratt, Craig E. Jackman, Peters Acquisition Co	95–2420	08/29/95
General Electric Company, Outlet Communications, Inc., Outlet Communications, Inc	95–2442	08/29/95
General Electric Company, National Westminster Bank plc, Tilden Financial Corp	95–2452	08/29/95
Agrium Inc., Nu-West Industries, Inc., Nu-West Industries, Inc	95–2422	08/31/95
Manor Care, Inc., Beverly Enterprises, Inc., Beverly Enterprises, Inc	95–2356	09/01/95
Clear Channel Communications, Inc., BCI Growth III, L.P., WHP Television, L.P	95–2393	09/01/95
''Winterthur'' Swiss Insurance Company, Baldwin and Lyons, Inc., Hoosier Insurance Company	95–2409	09/01/95
First Business Capital Group, Inc., Sterling West Bancorp, Sterling Business Credit, Inc	95–2456	09/01/95
PriCellular Corporation, Sterling Cellular Holdings Limited, Great Seal Cellular Limited Partnership	95–2462	09/01/95
Burlington Resources Inc., Roger H. Evans, Jr. and Ann C. Evans, Race Holding Co. and B T Operating Co	95–2463	09/01/95
Lincoln National Corporation, North American Property Unit Trust, Largo Mall, Inc	95–2471	09/01/95
Diamond Multimedia Systems, Inc., Supra Corporation, Supra Corporation	95–2472	09/01/95
Jerfferson-Pilot Corporation, Household International, Inc., Alexander Hamilton Life Insurance Company of America	95–2473	09/01/95
Tetra Tech, Inc., The Black & Decker Corporation, PRC Environmental Management, Inc	95–2476	09/01/95
Sanifill, Inc., Filiberto Lebron Saldana, El Coqui Waste Disposal, Inc	95–2477	09/01/95
ARAMARK Corporation, Alan F. Bloomfield, Gall's Inc	95–2480	09/01/95
Burlington Resources Inc., C. Campbell & Michelle C. Evans, Race Holding Co. and B T Operating Co	95–2481	09/01/95
Avis, Inc., Sam J. Frankino, National Auto Credit, Inc	95–2483	09/01/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 082895 AND 090895—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Hugo Pimienta, Interamericas Investments, Ltd. (a Grand Caymans co.), Integra Financial Services Corp	95–2484	09/01/95
Philips Electronics N.V. (a Dutch company), Rodolfo Rodriguez-Miranda, Unimusica, Inc	95–2486	09/01/95
Philips Electronics N.V. (a Dutch company), Ricardo Cisneros, Unimusica, Inc	95–2487	09/01/95
Philips Electronics N.V., Scesplana Settlement, Unimusica, Inc	95–2488	09/01/95
Boise Cascade Corporation, Jay Sarver, Word Technology Systems, Inc	95–2497	09/01/95
Boise Cascade Corporation, Herbert Gittelman, Word Technology Systems, Inc	95–2498	09/01/95
Hollinger, Inc., Kenneth R. Thomson, The Northwest Arkansas Times	95–2505	09/01/95
Falcon Drilling Company, Inc., Sonat Offshore Drilling, Inc., Sonat Offshore Ventures Inc	95–2507	09/01/95
900 Partners' Investments, Flagstar Companies, Inc., IM Parks, Inc	95–2336	09/03/95
Eureko B.V., California Casualty Management Company, California Casualty & Life Insurance Co	95–2468	09/05/95
DRLX Partners, L.P., ENSCO International Incorporated, ENSCO Technology Company, ENSCO Technology Canada Inc	95–2492	09/05/95
WLR Food, Inc., J. Harold Webber, New Hope Feeds, Inc., Economy Truck Leasing Inc	95–2499	09/05/95
Worms & Cie, National Gypsum Company, National Gypsum Company	95–2466	09/06/95
Federal-Mogul Corporation, Mr. Candido Gonzalez, Auto-Repuestos de Puerto Rico, Inc	95–2482	09/07/95
Republic Waste Industries, Inc., Felix A. Crawford, Southland Environmental Services, Inc	95–2501	09/07/95
Felix A. Crawford, Republic Waste Industries, Inc., Republic Waste Industries, Inc	95–2502	09/07/95
Aetna Life and Casualty Company, David L. Tsoong, M.D., Gateway Medical Group I, Inc	95–2503	09/07/95
Heilig-Meyers Company, Transamerica Corporation, BWAC International Corporation/BWAC Credit Corporation	95–2510	09/07/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23566 Filed 9–21–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Fresno United States Courthouse; Notice of Availability

AGENCY: General Services Administration.

ACTION: Notice of Availability of the Final Environmental Impact Statement (EIS) for a new United States Courthouse.

SUMMARY: The action to be evaluated by this EIS is the site selection and construction of a new United States Courthouse in Fresno, California. The Facility will be located on an approximately 4.5 acre site and includes construction of 392 subterranean and surface parking spaces.

ALTERNATIVES: The EIS evaluates four alternative sites. Three of the sites are located in downtown area of the city while the fourth is located in north Fresno. In addition, as required by the National Environmental Policy Act (NEPA), the ''No Action'' alternative is also analyzed in the EIS as a baseline for gauging the impacts of not building a new courthouse.

PUBLIC INVOLVEMENT: The public is invited to participate in reviewing the Final EIS. A copy of the FEIS is available for public review at the Fresno County Library, 2420 Mariposa Street in Fresno, and at GSA's Field Office at the B. F. Sisk Federal Building-United States Courthouse, 1130 'O' Street in Fresno. Comments are due: October 13, 1995.

POINT OF CONTACT: Mr. Javad Soltani, Asset Manager, United States General Services Administration, The Pacific Rim Region, at (415) 744–5255.

Dated: September 11, 1995.

Aki K. Nakao,

Deputy Regional Administrator (9AD).

[FR Doc. 95–23503 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–23–M

Public Buildings Service

Evo A. Deconcini Federal Building—United States Courthouse City of Tucson, Arizona; Notice of Availability Final Environmental Impact Statement

ACTION: Pursuant to the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the U.S. General Services Administration (GSA) hereby gives notice that Final EIS for the construction of a new FB–CT within the City of Tucson, Arizona has been prepared and filed with the United States Environmental Protection Agency (EPA). The proposed project would include the construction of a new FB–CT with approximately 419,742 gross square feet (GSF) of building space and 187 onsite parking spaces. The preferred site encompasses approximately 4 acres and is located within the city's Central Business Area (CBA). The site is bound by the US West bank/office building, the historic El Paso and Southwestern depot and courtyard, and a private paved parking lot on the west, West Congress Street on the north, Granada Avenue to the east, and the southern boundary would be a presently undetermined property line located approximately 600 feet south of West Congress Street.

ALTERNATIVES: In addition to the Proposed Action, the DEIS examined five alternatives including: (1) Construction of the FB–CT on three, separate, alternative sites within the CBA; and (2) no action or continued use of the existing FB–CT and lease space.

PUBLIC INVOLVEMENT: The Final EIS, prepared by GSA addressing this action, is on file and may be obtained from: Ms. Sheryll White, U.S. General Services Administration, Portfolio Management Division (9PT), 525 Market Street, San Francisco, CA 94105–2799, Telephone: (415) 744–5252. A limited number of copies of the Final EIS is available to fill single copy requests. Loan Copies of the Final EIS are available for review at the City of Tucson Central Library and at the GSA Field Office, 300 West Congress Street, Tucson, Arizona.

GSA encourages all interested parties to comment on the document. Written comments on the Final EIS can be submitted until October 16, 1995 to the address listed above.

Dated: September 11, 1995.

Aki K. Nakao,

Deputy Regional Administrator (9AD).

[FR Doc. 95–23502 Filed 9–21–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review; Proposed Information Collection Submitted for Public Comment and Recommendations

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). To request copies of the proposed collection of information write to The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s)

Title: Welfare Reform Demonstration: Special Application Form.

OMB No.: 0970–0134.

Description: The information collected by the ''Welfare Reform Demonstration: Special Application Form'' will be used by the Department of Health and Human services to consider welfare reform demonstration projects. Under 42 U.S.C. 1315(a), the Department is given latitude, subject to the requirements of the Social Security Act, to consider and approve demonstration proposals that are likely to assist in promoting the objectives of titles IV–A and D and XIX of the Act.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Form	54	1	0.75	40.5
Estimated Total Annual Burden Hours: 40.5				

Dated: September 14, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–23521 Filed 9–21–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC) Family and Intimate Violence Prevention Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 3 p.m.–6 p.m., October 22, 1995.

Place: Holiday Inn Downtown, Des Moines Room, 1050 6th Avenue, Des Moines, Iowa 50314, 515/283–0151.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to the ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence. The Subcommittee makes recommendations regarding policies, strategies, objectives and priorities; and advises on the development of a national plan for family and intimate violence and the development of new technologies and their subsequent application.

Matters to be Discussed: The Subcommittee will discuss State and community-based projects funded in fiscal year 1994 by the Family and Intimate Violence Prevention Program.

Agenda items are subject to change as priorities dictate.

Contract Person for More Information: Ms. Denise Johnson, Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway NE, M/S K–60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

Dated: September 15, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–23555 Filed 9–21–95; 8:45 am]

BILLING CODE 4163–18–M

Substance Abuse and Mental Health Services Administration

Proposed Data Collection Available for Public Comment

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Alcohol and Drug Services Survey (ADSS) Phase I—New—ADSS Phase I will gather information from a sample of 2,200 substance abuse treatment programs nationwide, including data on treatment type and costs, program capacity, number of clients served, waiting lists, and services provided to

special populations including pregnant women. Interviews will also be conducted with approximately 1,200 ''parent'' facilities to ascertain their organizational relationship to the treatment facilities. Automated collection techniques are not cost-effective for this study. ADSS is a three phase study that will be conducted twice. The total annual burden estimate for Phase I of the first round of ADSS is 5,440 hours, as shown below:

	Number of respondents	Number of responses per respondent	Average burden/response	Total burden
Treatment facility directors	2,200	2	1.1 hours	4,840 hours.
Parent facility directors	1,200	1	.5 hours	600 hours.

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated September 17, 1995.

Richard Kopand,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–23532 Filed 9–21–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–55]

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 utilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226); 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 Brian Rooney, 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

Propertieslisted 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 Mark Johnston 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: GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: September 15, 1995.

Ken Williams,

Deputy Assistant Secretary for Grant Programs.

Title V, Federal Surplus Property Program
Federal Register Report for 09/22/95

Suitable/Available Properties

Buildings (by State)

Arkansas

Federal Building
115 South Denver Avenue
Russellville Co: Pope AR 80205–
Landholding Agency: GSA
Property Number: 549530004
Status: Excess
Comment: 2640 sq. ft., 2 story plus basement, presence of asbestos, timber frame w/brick facing, most recent use—offices.
GSA Number: 7–G–AR–546

Wyoming

Bldg., Seminoe Dam House
Seminoe Camp Co: Carbon WY
Landholding Agency: Interior
Property Number: 619530014
Status: Excess
Comment: 832 sq. ft. frame house, off-site use only.

Bldg., Seminoe Dam House
Seminoe Camp Co: Carbon WY
Landholding Agency: Interior
Property Number: 619530015
Status: Excess
Comment: 1200 sq. ft. frame house, off-site use only.

Bldg., Seminoe Dam House
Seminoe Camp Co: Carbon WY
Landholding Agency: Interior
Property Number: 619530016
Status: Excess
Comment: another 1200 sq. ft. frame house, off-site use only.

Land (by State)

Arizona

Tract No. OSG–1–23
Near McDowell Road & Bush Hwy.
Mesa Co: Maricopa AZ 85207–
Landholding Agency: Interior
Property Number: 619530012
Status: Excess
Comment: 0.29 acres, located next to private land owner, limited access.

Wisconsin

Portion, Kewaunee Eng. Depot
East Storage Yard
Kewaunee Co: Kewaunee WI 54216–
Landholding Agency: GSA
Property Number: 319440013
Status: Excess
Comment: 0.95 acres, storage bldg. on prop. owned by State, limited access (water access only).
GSA Number: 2–D–WI–572

Unsuitable Properties

Buildings (by State)

Maine

Bld. 487
Bangor International Airport
Bangor Co: Penobscot ME 04401–
Landholding Agency: GSA
Property Number: 549530006
Status: Excess
Reason: Within airport runway clear zone.
GSA Number: 5700–26051

North Carolina

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530011
Status: Unutilized
Reason: Floodway.

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530012
Status: Unutilized
Reason: Floodway.

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530013
Status: Unutilized
Reason: Floodway.

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530014
Status: Unutilized
Reason: Floodway.

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530015
Status: Unutilized
Reason: Floodway.

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530016
Status: Unutilized
Reason: Floodway.

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530017
Status: Unutilized
Reason: Floodway.

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530018
Status: Unutilized
Reason: Floodway.

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530019
Status: Unutilized
Reason: Floodway.

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530020
Status: Unutilized
Reason: Floodway.

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530021
Status: Unutilized
Reason: Floodway.

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530022
Status: Unutilized
Reason: Floodway.

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 879530023
Status: Unutilized
Reason: Floodway.

Washington

Portion—Former Sage Complex
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 549530007
Status: Underutilized
Reason: Secured Area.
GSA Number: 9–G–WA–513M

[FR Doc. 95–23397 Filed 9–21–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P; F–14938–C]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to St. Michael Native Corporation for approximately 640 acres. The lands involved are in the vicinity of St. Michael, Alaska.

Kateel River Meridian, Alaska

T. 24 S., R. 18 W.
Sec. 36

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal

government or regional corporation, shall have until October 23, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Robin Rodriguez,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–23561 Filed 9–21–95; 8:45 am]

BILLING CODE 4310–JA–P

[CO–034–95–1220–00]

Designated Order; Notice of Motorized Vehicle Use and Overnight Camping Closure of Approximately 25 Acres of Public Lands in T45N, R8W, Sec. 9, Near Ridgway, CO, in Ouray County

AGENCY: Bureau of Land Management, Montrose District, Uncompahgre Resource Area, Montrose, Colorado.

ACTION: Notice; closure of a tract of public land administered by the Bureau of Land Management to motorized vehicle use and overnight camping. The 25 acre (approximate) tract of land is located west of US Highway 550S adjacent to the Uncompahgre River, in T45N, R8W, Section 9, about one mile north of Ridgway, Colorado. This closure does not affect other uses of the public lands in this tract.

DATES: This closure will be effective September 29, 1995 until such time that the San Juan-San Miguel Resource Management Plan is amended or revised.

SUPPLEMENTARY INFORMATION: This closure is established to assist the Bureau of Land Management in reducing problems associated with vehicle and camping use in this special riparian/wetland area, recently established and managed as a ''watchable wildlife'' site. The closure is consistent with management of the non-motorized Uncompahgre RiverWay trail connecting this tract of public land with Ridgway Town Park.

This closure will prevent excessive impacts to soil, riparian vegetation, wildlife, and other resources caused by overnight camping and inappropriate vehicle use. The closure applies to all public land users except those who have prior approval specifically from the authorized officer.

CFR Title 43, Chapter II, Subpart 8364.1 and Subpart 8341.2(a) provide BLM the authority for these closures. 8360.0–7 and 8340.0–7. Penalties: Violations of any regulations in these subparts by a member of the public are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this closure of public lands administered by the Bureau of Land Management in Ouray County in the State of Colorado may be obtained from Chip Marlow, Resource Advisor, Montrose District Office, 2465 S. Townsend, Montrose, Colorado, 81401, (970) 249–7791 or from Karen Tucker, Outdoor Recreation Planner, Uncompahgre Resource Area, 2505 S. Townsend, Montrose District, Montrose, Colorado, 81401, (970) 249–6047.

Dated: September 15, 1995.

Allan J. Belt,

Area Manager.

[FR Doc. 95–23504 Filed 9–21–95; 8:45 am]

BILLING CODE 4310–5B–M

[NV–930–3130–00; N–59229]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Advent Methodist Church proposes to use the land for a church site.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 32, NE1¼NE¼ NW¼

Containing 10 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement described as the north 50 feet, the west 40 feet, and the south 30 feet of the subject parcel, together with a 20-foot spandrel area in the SE corner thereof concave northwesterly and being tangent to the north line of said south 30 feet and tangent to the west line of said east 40 feet; also together with a 25 foot spandrel area in the NE corner thereof concave southwesterly being tangent to the West line of the East 40 feet and tangent to the south line of said north 50 feet, in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. N–55369 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/ conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89108.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development,

whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: August 31, 1995.

District Manager,

Las Vegas, NV.

FR Doc. 95–23505 Filed 9–21–95; 8:45 am]

BILLING CODE 3130–HC–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications.

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.*).

Permit No. PRT–803610

Applicant: Museum of Vertebrate Zoology, Berkeley, California. The applicant requests a permit to capture and remove from the wild individual Morro Bay kangaroo rats (*Dipodomys heermanni morroensis*) throughout the species' range, excluding the Bayview ''Morro-Palisades'' property, in San Luis Obispo County, California for captive propagation and then reintroduce captive-bred individuals back into the species' historic range, where authorization has been obtained, to enhance the propagation and survival of the species.

Permit No. PRT–804887

Applicant: Brian Tsukimura, Fresno, California. The applicant requests a permit to take (collect) the vernal pool tadpole shrimp (*Lepidurus packardi*) in Merced, Fresno, and Tulare Counties, California for reproductive studies for the purpose of enhancing the survival of the species.

Permit No. PRT–804204

Applicant: Jill Dye, San Diego, California. The applicant requests a permit to take (survey and mark nests) the California least tern (*Sterna antillarum browni*) and western snowy plover (*Charadrius alexandrinus*) for population studies in south San Diego Bay, California for the purpose of enhancing the survival of the species.

Permit No. PRT–806679

Applicant: Maria Ellis, Fall River Mills, California. The applicant requests a permit to take (capture, weigh, mark, and release) the Shasta crayfish (*Pacifastacus fortis*) to conduct presence/absence surveys and population studies throughout the range of the species in Shasta County, California for the purpose of enhancing the survival of the species.

Permit No. PRT–806723

Applicant: Enterprise Advisory Services, Inc., Oak Ridge, Tennessee. The applicant requests a permit to take (capture, mark, measure, radio-collar, ear-tag, collect biological samples, vaccinate for rabies, and relocate) the San Joaquin kit fox (*Vulpes macrotis mutica*), take (capture, mark, measure, and release) the blunt-nosed leopard lizard (*Gambelia silus*), giant kangaroo rat (*Dipodomys ingens*), and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and take (collect, preserve, and mount voucher specimens) the California jewelflower (*Caulantus californicus*), Kern mallow (*Eremalche kernensis*), San Joaquin wooly-threads (*Lembertia congdonii*), and Hoover's wooly-star (*Eriastrum hooveri*) on the Elk Hills Naval Petroleum Reserve, and Buena Vista Petroleum Reserve in Kern and San Luis Obispo Counties, and adjacent areas that are within the following townships and ranges of the Mt. Diablo base meridian T29S to T32S; R22E to R25E, in California for the purpose of enhancing the survival of these species.

DATES: Written comments on the permit applications must be received on or before October 23, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Telephone: 503–231–2063; FAX: 503–231–6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: September 15, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–23563 Filed 9–21–95; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32723]

Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp.—Construction and Operation Exemption—Stratford, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation of a line of railroad by Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP). The proposed 1,222-foot line will connect the track of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the track of SP at the Santa Fe/SP intersection at Stratford, TX. By decision served August 9, 1995 (published August 9, 1995, at 60 FR 40602), the Commission conditionally exempted the construction and operation of the line, subject to completion of environmental review and a further decision. The environmental analysis has now been completed.

DATES: This exemption is effective on September 15, 1995, subject to the condition that SP comply with certain mitigation measures adopted in the decision. Petitions to reopen must be filed by October 12, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32723 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201

Constitution Avenue, N.W., Washington, D.C. 20423; and (2) Petitioner's representative: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: September 15, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23495 Filed 9–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32704]

East Cooper & Berkeley Railroad—Construction and Operation of a Rail Line—Berkeley County, South Carolina

The East Cooper and Berkeley Railroad (ECBR) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 1.7-mile extension of ECBR's existing rail line in Berkeley County, South Carolina. The proposed rail line extension is part of a large economic incentive program offered jointly by state and local governments to NUCOR Corporation in connection with its proposed electric arc steel mill and associated industries. The ECBR rail line extension would carry materials for the construction of the steel mill and then, upon completion of the mill, move raw materials in (mainly scrap) and finished steel products out. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA) for this project. Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring ECBR to implement the mitigation contained in the EA.

The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Dana White (202) 927–6214. Requests for copies of the EA should also be directed to Ms. White.

Date made available to the public: September 22, 1995.

Comment due date: October 23, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23584 Filed 9–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–57 (Sub-No. 41X)]

Soo Line Railroad Company—Abandonment Exemption—in Benson County, ND

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 5.5 miles of its ''Harlow to Baker Trackage'' between milepost 474.35±, near Harlow, and milepost 479.54±, near Baker, in Benson County, ND.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 22, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 2, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Larry D. Starns, 1000 Soo Line Building, 105 South 5th St., Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Soo has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23497 Filed 9–21–95; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 388 (Sub-No. 36)]

Intrastate Rail Rate Authority—Wisconsin

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Wisconsin to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective on September 23, 1995, and will expire on September 22, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: September 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23496 Filed 9–20–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of A Currently Approved Collection

(1) Denial of Federal Benefits for Drug Offenders.

(2) Form: OJP 3500/2 (5/90). Office of justice Programs, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other: Federal Government. The Anti-Drug abuse Act of 1988, dated November 19, 1995, Section 5301, permits Federal, state and local courts to deny certain Federal benefits to individual's convicted of any Federal or state offense. The form is used to collect the necessary information to deny a convicted individual from receiving any benefits.

(4) 500 responses per year at 5 minutes per response.

(5) 41 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 18, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

FR Doc. 95–23514 Filed 9–21–95; 8:45 am]

BILLING CODE 4410–18–M

Immigration and Naturalization Service

[INS No. 1649–95]

Office of Policy and Planning Stakeholders' Workshop

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of request for input re: INS Strategic Plan Key Issues and notice of Stakeholders' Workshop.

SUMMARY: The Immigration and Naturalization Service (INS) is collecting information for input on key issues facing INS as we move forward with initiatives set forth in the Strategic Plan. We are soliciting information from those entities affected by, or interested in, the INS Strategic Plan, which provided long-range goals and objectives for the major functions and operations of the agency. Interested parties may provide input through written comments or attendance at a Stakeholders' Workshop to be held in October 1995.

DATES: Written comments on issues outlined in the Strategic Plan are due by October 17, 1995. The Stakeholders' Workshop will be held October 23, 1995, from 9 a.m. to 5 p.m. Seating is limited, so participants should respond by phone at (202) 616–7768, by October 17, 1995. It is requested that only one or two representatives per organization attend.

ADDRESSES: The Stakeholders' Workshop will be held at the Holiday Inn, 4610 North Fairfax Drive, Arlington, Virginia. Written comments should be sent, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS No. 1649–95 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth Brown, Office of Policy and Planning, Immigration and Naturalization Service, 425 I Street, NW., Room 6321, Washington, DC 20536, telephone (202) 616–7987.

SUPPLEMENTARY INFORMATION: The ''Government Performance and Results Act of 1933'' mandates that, no later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. The Act also mandates that, during development of strategic plans, agencies must consult with Congress and those entities potentially affected by or interested in such plans. The INS Strategic Plan was

approved on November 2, 1994. To consult with those who have an interest in the progress of the INS Strategic Plan, the Service is accepting written comments. Written comments, limited to a maximum of 3 pages, should address what you believe are the major issues confronting INS in meeting initiatives set forth in the Strategic Plan, and the recommended strategies for moving INS in desired directions to properly address those major issues. Also, in accordance with Executive Order 12862, ''Setting Customer Service Standards.'' the INS is setting standards but we want to continue to canvass our stakeholders as we work towards the future in managing our agency.

The INS will also be holding a Stakeholders' Workshop on October 23, 1995, to further solicit the views and opinions of Congressional staff, Federal agencies, immigration groups, members of the public, and other parties which have a ''stake'' in the future actions of INS. The 1-day workshop will be structured to encourage participants to have open dialogue about the major issues that INS needs to consider in addressing initiatives within the Strategic Plan. The workshop will be structured in breakout sessions led by professional facilitators. Participants should have knowledge and understanding of immigration issues. Attendees will be expected to participate in the breakout sessions and to provide direct input during discussions. The information compiled in the breakout sessions will be documented and presented in the afternoon during a breakout session.

Dated: September 18, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–23534 Filed 9–21–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Agency Information Collection Review

AGENCY: Employment Standards Administration, DOL.

ACTION: Expedited review of the following information collection request under the Paperwork Reduction Act.

SUMMARY: The Office of Workers' Compensation (OWCP), Employment Standards Administration (ESA), Department of Labor (DOL), invites comments on the following proposed expedited review information collection request, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988).

DATES: This expedited review is being requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 29, 1995.

ADDRESSES: Written comments should be addressed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Debra Bond, Desk Officer, 725 17th Street, N.W., Room 10235, New Executive Office Building, Wash., D.C. 20503. Request for copies of the proposed information collection request should be addressed to Theresa M. O'Malley, Department of Labor, 200 Constitution Ave., N.W. Room N–1301, Wash., DC 20210.

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley (202) 219–5095. Individuals who use a telecommunications device for the deaf (TTY/TDY) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested persons an early opportunity to comment on information requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with the agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management Policy, publishes this notice simultaneous with the submission of this request to OMB. This notice contains the following information:

Type of Review: Expedited

Title: Claim for Compensation on Account of Traumatic Injury or Occupational Disease, Form CA–7; and, Claim for Continuing Compensation on Account of Disability, Form CA–8

Frequency of Response: Form CA–7 is used as an initial claim for compensation and the CA–8 is filed for continuing compensation

Affected Public: The forms are required of a member of the public on rare occasions, such as when compensation is claimed after the claimant's Federal employment has terminated

Form	Respond-ents	Per response	Total hours
CA–7 .	Est. 200 ...	30 minutes ..	100
CA–8 .	Est. 200 ...	30 minutes ..	100

Total Annual Burden Hours: 200

Respondents Obligation to Reply: Mandatory for determining claimants continuing eligibility for and computation of benefits

Description: The ESA, Office of Workers' Compensation Programs administers the Federal Employees' Compensation Act that provides for payment of benefits for wage-loss and/or for permanent impairment to a scheduled member arising out of a work related injury or disease. The Act outlines eligibility requirements, as well as amount of benefits. Information from these forms allow OWCP to fulfill its statutory requirement.

Signed at Washington, D.C. this 18 day of September 1995.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–23536 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to October 18, 1995 Request for Nominations

The announcement of vacancies to the ERISA Advisory Council is being extended through October 18, 1995. Earlier candidates whose nominations have been acknowledged need not reapply.

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides or the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives

from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary, or his designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the council expire on Tuesday, November 14, 1995. The groups or fields represented are as follows: employee organizations (multiemployer plans), accounting, insurance, employers, and the general public (pensioners). Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 18, 1995.

Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C. this 19th of September, 1995.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 95–23591 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–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.

Modifications to General Wage Determination Decisions

The number of 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 and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Michigan
MI950007 (Feb. 10, 1995)

Volume V

Iowa
IA950004 (Feb. 10, 1995)
IA950005 (Feb. 10, 1995)
IA950006 (Feb. 10, 1995)
IA950013 (Feb. 10, 1995)
IA950016 (Feb. 10, 1995)
IA950024 (Feb. 10, 1995)
Kansas
KS950008 (Feb. 10, 1995)
KS950012 (Feb. 10, 1995)
Missouri
MO950001 (Feb. 10, 1995)

Volume VI

None

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.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 15th day of September 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–23303 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Appointment of New Members

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of appointment of members.

Notice is hereby given that appointments have been made to fill two (2) vacancies on the Advisory Committee on Construction Safety and Health (ACCSH). Pursuant to 29 CFR 1912.3(g), the terms of members appointed in September 1994 were staggered to provide for continuity in the membership of the ACCSH. Accordingly, one member is being appointed to a two-year term to fill the vacancy created by the resignation of a member appointed to a one-year term. The other new member is being appointed to fill the vacancy created by the resignation of a member prior to the expiration of a two-year term. The new members of the Committee, the categories represented and the terms of appointment are as follows:

Employee

Mr. Steve Cooper, Executive Director, Occupational Safety and Health, International Association of Bridge, Structural and Ornamental Ironworkers (term expires September 1997).

Employer

Mr. Robert Masterson, Manager, Safety and Loss Control, The Ryland Group, Inc (term expires September 1996).

The Advisory Committee on Construction Safety and Health was established under section 107 of the Contract Work Hours and Safety Standards Act and 7(b) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on matters pertaining to construction safety and health.

For Additional Information Contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone (202) 523–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of September, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–23535 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–90; Exemption Application No. D–09783, et al.]

Grant of Individual Exemptions; Texas Commerce Bank National Association, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Texas Commerce Bank National Association (Texas Commerce) Located in Houston, TX

[Prohibited Transaction Exemption 95–90; Exemption Application No. D–09783]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the leasing, since September 15, 1993,

of certain office space in a building (the Building) owned by the Maritime Association—I.L.A. Pension Fund (the Pension Plan) to Texas Commerce, a party in interest with respect to the Pension Plan.

This exemption is conditioned on the following requirements:

(a) The trustees of the Pension Plan (the Trustees), who are independent of Texas Commerce, believe that the leasing of office space in the Building by the Plan to Texas Commerce is and will continue to be in the best interest of the Pension Plan and its participants and beneficiaries.

(b) The decision by the Pension Plan to enter into and continue leasing office space in the Building to Texas Commerce has been made and will continue to be made by the Trustees in consultation with an independent property manager and an independent fiduciary.

(c) The terms of the lease have remained and will remain at least as favorable to the Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) The rental charged by the Pension Plan under the lease has been based and will continue to be based upon arm's length negotiations with unrelated parties.

(e) The Trustees, in conjunction with the independent fiduciary, have and will continue to (i) Monitor the terms and conditions of the lease as well as the terms and conditions of the exemption and (ii) take all actions that are necessary and proper to safeguard the interests of the Pension Plan and its participants and beneficiaries.

(f) The subject lease has involved and will continue to involve less than 25 percent of the Pension Plan's total assets.

EFFECTIVE DATE: If granted, this exemption will be effective September 15, 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 31, 1995 at 60 FR 39014.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption which related to issues that were not germane to the subject lease transaction. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption as described above. The complete application file, including all supplemental submissions received by the Department as well as the comment letter, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Group Profit Sharing Plan and Retirement Savings Plan (the Plan) Located in Cedar City, Utah

[Prohibited Transaction Exemption 95–91; [Exemption Application No. D–09979]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain real property (the Property) to the Cedar Development Corporation, a party in interest with respect to the Plan, provided that (1) The Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expense from the transaction; and (3) the Plan receives as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 21, 1995, at 60 FR 37687.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Central Freight Lines Employees Profit Sharing and Retirement Plan (the Plan) Located in Waco, TX

[Prohibited Transaction Exemption 95–92; Exemption Application No. D–09994]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the cash sale by the Plan of certain unimproved real property (the Property) to Central Freight Lines, Inc., a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any real estate commissions or fees in connection with the transaction; and (4) the Plan receives a sales price for the Property which is not less than the greater of (a) the fair market value of the Property as determined by a qualified, independent appraiser, or (b) the net acquisition cost of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 11, 1995 at 60 FR 41123.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of September, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–23583 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–P

Work Group on Defined Contribution Adequacy; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, public meetings of the Work Group on Defined Contribution Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 11, 1995, in Room S–3215 A-B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The propose of the meetings, which will run from 9:30 a.m. to noon and from 1:00 until approximately 3:30 p.m., is to allow work group members to begin formulating their recommendations to the Secretary of Labor as they relate to various policy issues surrounding retirement income adequacy.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 1, 1995 to Sharon Morrissey, Acting Executive Secretary, Erisa Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Defined Contribution Adequacy Work Group of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 1 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and indicated in the record of the meeting if received on or before October 1, 1995.

Signed at Washington, DC this 19th day of September, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–23587 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefit Administration

Work Group on Pension Education; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142. a public meeting of the Work Group on Pension Education of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 10, 1995, in Room S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 9:30 a.m. and end at approximately noon on October 10, is to allow Work Group members the opportunity to begin formulating their final recommendations to be made to the Secretary of Labor on the necessity of the Department's continuing efforts to better educate the public to save for retirement and to assist in identifying additional ways in which the Department may meet this challenge.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 1, 1995 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Pension Education Work Group of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 1 at the address indicated in the notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 1, 1995.

Signed at Washington, DC this 19th day of September, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–23589 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefits Administration

Work Group on Real Estate Investment; Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on the Real Estate Investment of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on October 10, 1995, in Room S–3215 A–B, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will begin at 1:00 p.m. and will last until approximately 4:30 p.m., is to hear any final testimony on regulatory issues that impact on real estate investments for pension funds and allow members to begin formulating their final recommendations for the Secretary of Labor on this issue.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 1, 1995, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Real Estate Investment Work Group of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by October 1 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in

the record of the meeting if received on or before October 1, 1995.

Signed at Washington, DC this 19th day of September, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–23588 Filed 9–21–95; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, the Cleveland Electric Illuminating Company, the Toledo Edison Company Beaver Valley Power Station, Unit Nos. 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–66 and NPF–73 Duquesne Light Company, et al. (the licensee) for operation of Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2), located in Beaver County, Pennsylvania.

The proposed amendments would revise the Administrative Controls section and the Bases section of the BVPS–1 and BVPS–2 technical specifications to be consistent with the requirements of the Offsite Dose Calculation Manual (ODCM). The ODCM was recently updated to reflect the radioactive liquid and gaseous effluent release limits and the liquid holdup tank activity limit of BVPS–1 License Amendment No. 188 and BVPS–2 License Amendment No. 70 which were issued June 12, 1995.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by this proposed technical specification change which modifies the liquid and gaseous effluent release limits and the Liquid Holdup Tank activity limit. This technical specification change will not impact the function or method of operation of plant equipment. Thus, there is no significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed change. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report are not increased by this change.

The proposed change affects the liquid and gaseous effluent release limits and Liquid Holdup Tank activity limit. As such, the proposed change has no impact on accident initiators or plant equipment, and therefore, does not affect the probabilities or consequences of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed technical specification revisions do not involve changes to the physical plant or operation of equipment considered as a potential accident initiator or equipment necessary to mitigate the consequences of an accident. The new Beaver Valley Power Station-Emergency Action Levels do use multiples of Offsite Dose Calculation Manual liquid release criteria for initiation of an unusual event or alert. However, there are no protective actions required when reaching either the unusual event or alert levels. The protective actions are performed when Environmental Protection Agency Drinking Water Standards are met or exceeded. Since limitations on concentrations of radioactive material released in liquid and gaseous effluents to unrestricted areas does not contribute to accident initiation, a change related to the requirement cannot produce a new accident scenario or produce a new type of equipment malfunction, as such, this change does not alter any existing accident scenarios.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change concerns the liquid and gaseous effluent release limits and Liquid Holdup Tank activity limit and does not directly affect plant equipment or operation related to design basis accident prevention or mitigation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed technical specification would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 23, 1995, the licensee may file a request for a hearing with respect

to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments request involves a significant hazards consideration, any hearing held would take place before the issuance of the amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz; Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 13, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 19th day of September 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23540 Filed 9–21– 95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–445 AND 50–446]

Texas Utilities Electric Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–87 and NPF–89, issued to the Texas Utilities Electric Company (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated September 19, 1994, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) and design change reports for facility changes made under 10 CFR 50.59 for the CPSES. Under the proposed exemption the licensee would schedule updates to the single, unified FSAR for the two units that comprise CPSES once per fuel cycle (based on the unit with the shortest interval between scheduled refueling outages). With the current fuel cycles, FSAR updates would be submitted every 18 months.

The Need for the Proposed Action

10 CFR 50.71(e)(4) requires licensees to submit updates to their UFSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since CPSES, Units 1 and 2 share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. CPSES units have alternating refueling outages, thus linking the submittal of the update to the completion of one unit's refueling outage when the other unit is scheduled for a refueling outage within six to twelve months is an administrative burden which does not enhance achieving the purpose of the rule. Allowing the exemption would maintain the CPSES FSAR current within 24 months of the last revision and would not exceed the 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Comanche Peak Steam Electric Station, dated October 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on August 10, 1995, the staff consulted with the Texas State official, Mr. Authur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes 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 the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 19, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 12th day of September 1995.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23539 Filed 9–21–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 5–7, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Tuesday, August 22, 1995 (60 FR 43619).

Thursday, October 5, 1995

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: Proposed Final Revision 1 to Regulatory Guide 1.152, ''Criteria for Programmable Digital Computer Systems Software in Safety-Related Systems of Nuclear Power Plants.'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revision 1 to Regulatory Guide 1.152.

Representatives of the industry will participate, as appropriate.

10:30 a.m.–12:30 p.m.: Meeting with the Director of the Office of Nuclear Regulatory Research (RES) (Open)—The Committee will hear presentations by and hold discussions with the RES Director on items of mutual interest, including:

- Overview of the RES program support budget for FY 1996. Impact of the proposed budget reduction on continuing and proposed research programs.
- Role of the ACRS and NSRRC in reviewing NRC research programs
- High Burnup Fuel Issues/Research activities
- Maintenance of technical capability:

—at NRC
—at supporting laboratories (focus on a few labs)

- Development of supporting information for risk-based regulations and performance-based regulations:

—test cases
—human factors
—organizational factors

- Potential research needs in the following areas:

—advanced plants
—plant life extension

—digital instrumentation and control

• Severe accident ''closure''

1:30 p.m.–3:00 p.m.: National Academy of Sciences and Engineering Study on Application of Digital Instrumentation and Control Technology to Nuclear Power Plants (Open)—The Committee will hear presentations by and hold discussions with the Chairman of the NAS Committee, which was formed to study digital I&C issues, regarding the findings and recommendations of NAS contained in its Phase I report.

Representatives of the NRC staff will participate, as appropriate.

3:15 p.m.–4:45 p.m.: Shutdown Cooling Bypass Event at Hope Creek Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings and recommendations of the Special Inspection Team that evaluated the July 8, 1995 shutdown cooling bypass event at the Hope Creek Nuclear Plant.

Representatives of the industry will participate, as appropriate.

5:00 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as proposed ACRS reports on the resolution of Generic Safety Issue 78, ''Monitoring of Fatigue Transient Limits for the Reactor Coolant System,'' and on Fatigue Action Plan proposed by the NRC staff.

Friday, October 6, 1995

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:30 a.m.–10:00 a.m.: Foreign Reactor Events Involving Human Factor Issues (Open/Closed)—The Committee will hear representations by and hold discussions with representatives of the NRC staff regarding foreign reactor events involving human factor issues.

A portion of this session may be closed to discuss information provided in confidence by a foreign source.

10:15 a.m.–11:45 a.m.: Supplement 5 to Generic Letter 88–20, IPE for External Events for Severe Accident Vulnerabilities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Supplement 5 to Generic Letter 88–20.

Representatives of the industry will participate, as appropriate.

11:45 a.m.–12:00 Noon: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses expected from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports.

1:00 p.m.–1:45 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:45 p.m.–2:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

2:15–6:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting, including those on the proposed resolution of Generic Safety Issue 78 and on Fatigue Action Plan.

Saturday, October 7, 1995

8:30 a.m.–10:00 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports on matters considered during this meeting, and on other matters noted above.

10:15 a.m.–12:45 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of importance to the NRC, including rebaselining of the Committee activities for FY 96–97.

12:45 p.m.–1:00 p.m.: Miscellaneous (Open)—The Committee will discuss matters considered during this meeting and matters considered but not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that related solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6)

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunist to present oral statements and the time allotted therefore can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301–415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: September 18, 1995.

Andrew L. Bates,

Advisory Committee Management Officer

[FR Doc. 95–23537 Filed 9–21–95; 8:45 am]

BILLING CODE 7590–01–M

Uranium Mill Facilities, Notice of Two Guidance Documents: Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments; Final Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of final guidance.

SUMMARY: The U.S. Nuclear Regulatory Commission has finalized two uranium mill licensing guidance documents after consideration of comments received in response to a request for public comment in a Federal Register notice published May 13, 1992 (57 FR 20525). Only minor changes were made to the proposed guidance documents titled, ''Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments'' and ''Position and Guidance on the Use of Uranium Mill Feed Materials Other Than Natural Ores.''

ADDRESSES: Copies of the comments and the NRC staff responses, as well as SECY–91–243, can be examined at the Commission's Public Document Room at 2120 L Street NW. (lower level), Washington DC.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION:

Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments

1. In reviewing licensee requests for the disposal of wastes that have radiological characteristics comparable to those of Atomic Energy Act (AEA) of 1954, Section 11e.(2) byproduct material (hereafter designated as ''11e.(2) byproduct material'') in tailings impoundments, staff will follow the guidance set forth below. Since mill tailings impoundments are already regulated under 10 CFR part 40, licensing of the receipt and disposal of such material [hereafter designated as ''non-11e.(2) byproduct material [1]''] should also be done under 10 CFR part 40.

2. Radioactive material not regulated under the AEA shall not be authorized for disposal in an 11e.(2) byproduct material impoundment.

3. Special nuclear material and Section 11e.(1) byproduct material waste should not be considered as candidates for disposal in a tailings impoundment, without compelling reasons to the contrary. If staff believes that such material should be disposed of in a tailings impoundment in a specific instance, a request for approval by the Commission should be prepared.

4. The 11e.(2) licensee must demonstrate that the material is not subject to applicable Resource Conservation and Recovery Act (RCRA) regulations or other U.S. Environmental Protection Agency (EPA) standards for hazardous or toxic wastes prior to disposal. To further ensure that RCRA hazardous waste is not inadvertently disposed of in mill tailings impoundments, the 11e.(2) licensee also must demonstrate, for waste containing source material, as defined under the AEA, that the waste does not also contain material classified as hazardous waste according to 40 CFR part 261. In addition, the licensee must demonstrate that the non-11e.(2) material does not contain material regulated under other Federal statutes, such as the Toxic Substances Control Act. Thus, source material physically mixed with other material, would require evaluation in accordance with 40 CFR part 261, or 40 CFR part 761. (These provisions would cover material such as: Characteristically hazardous waste; listed hazardous waste; and polychlorinated biphenyls.) The demonstration and testing should follow accepted EPA regulations and protocols.

5. The 11e.(2) licensee must demonstrate that there are no Comprehensive Environmental Response, Compensation and Liability Act issues related to the disposal of the non-11e.(2) byproduct material.

6. The 11e.(2) licensee must demonstrate that there will be no significant environmental impact from disposing of this material.

7. The 11e.(2) licensee must demonstrate that the proposed disposal will not compromise the reclamation of the tailings impoundment by demonstrating compliance with the reclamation and closure criteria of appendix A of 10 CFR part 40.

8. The 11e.(2) licensee must provide documentation showing approval by the Regional Low-Level Waste Compact in whose jurisdiction the waste originates as well as approval by the Compact in whose jurisdiction the disposal site is located.

9. The Department of Energy (DOE) and the State in which the tailings impoundment is located, should be informed of the Nuclear Regulatory Commission findings and proposed action, with a request to concur within 120 days. A concurrence and commitment from either DOE or the State to take title to the tailings impoundment after closure must be received before granting the license amendment to the 11e.(2) licensee.

10. The mechanism to authorize the disposal of non-11e.(2) byproduct material in a tailings impoundment is an amendment to the mill license under 10 CFR part 40, authorizing the receipt of the material and its disposal. Additionally, an exemption to the requirements of 10 CFR part 61, under the authority of § 61.6, must be granted. (If the tailings impoundment is located in an Agreement State with low-level waste licensing authority, the State must take appropriate action to exempt the non-11e.(2) byproduct material from regulation as low-level waste.) The license amendment and the § 61.6 exemption should be supported with a staff analysis addressing the issues discussed in this guidance.

Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores

Staff reviewing licensee requests to process alternate feed material (material other than natural ore) in uranium mills should follow the guidance presented below. Besides reviewing to determine compliance with appropriate aspects of appendix A of 10 CFR part 40, the staff should also address the following issues:

1. Determination of Whether the Feed Material is Ore

For the tailings and wastes from the proposed processing to qualify as 11e.(2) byproduct material, the feed material must qualify as ''ore.'' In determining whether the feed material is ore, the following definition of ore must be used:

Ore is a natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted in a licensed uranium or thorium mill.

2. Determination of Whether the Feed Material Contains Hazardous Waste

If the proposed feed material contains hazardous waste, listed under subpart D §§ 261.30–33 of 40 CFR (or comparable RCRA authorized State regulations), it would be subject to EPA (or State) regulation under RCRA. To avoid the

[1] ''non-11e.(2) byproduct material'' as used here is simply an encompassing term for source, special nuclear, and 11e.(1) byproduct materials.

complexities of NRC/EPA dual regulation, such feed material will not be approved for processing at a licensed mill. If the licensee can show that the proposed feed material does not contain a listed hazardous waste, this issue is resolved.

Feed material exhibiting only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) would not be regulated as hazardous waste and could therefore be approved for recycling and extraction of source material. However, this does not apply to residues from water treatment, so acceptance of such residues as feed material will depend on their not containing any hazardous or characteristic hazardous waste. Staff may consult with EPA (or the State) before making a determination of whether the feed material contains hazardous waste.

3. Determination of Whether the Ore is Being Processed Primarily for its Source-Material Content

For the tailings and waste from the proposed processing to qualify as 11e.(2) byproduct material, the ore must be processed primarily for its source-material content. There is concern that wastes that would have to be disposed of as radioactive or mixed waste would be proposed for processing at a uranium mill primarily to be able to dispose of it in the tailings pile as 11e.(2) byproduct material. In determining whether the proposed processing is primarily for the source-material content or for the disposal of waste, either of the following tests can be used:

a. *Co-disposal test:* Determine if the feed material would be approved for disposal in the tailings impoundment under the ''Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments,'' or revisions or replacements to that guidance. If the material would be approved for disposal, it can be concluded that if a mill operator proposes to process it, the processing is primarily for the source-material content. The material would have to be physically and chemically similar to 11e.(2) byproduct material and not be subject to RCRA or other EPA hazardous-waste regulations, as discussed in the guidance.

b. *Licensee certification and justification test:* The licensee must certify under oath or affirmation that the feed material is to be processed primarily for the recovery of uranium and for no other primary purpose. The licensee must also justify, with reasonable documentation, the certification. The justification can be based on financial considerations, the high uranium content of the feed material, or other grounds. The determination that the proposed processing is primarily for the source material content must be made on a case-specific basis.

If it can be determined, using the aforementioned guidance, that the proposed feed material meets the definition of ore, that it will not introduce a hazardous waste not otherwise exempted, and that the primary purpose of its processing is for its source-material content, the request can be approved.

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–23531 Filed 9–21–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21362; No. 812–9602]

Golden American Life Insurance Company, et al.

September 15, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Golden American Life Insurance Company (''Golden American''), Separate Account B (''Account B'') and Separate Account D (''Account D''—together with Account B, ''Separate Accounts''), and Directed Services, Inc. (''DSI'').

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) of the 1940 Act granting exemptions from Sections 12(b), 26(a)(2) and 27(c)(2) thereof and Rule 12b–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges, including an asset-based enhanced death benefit charge, from the assets of the Separate Accounts in connection with the offering of certain variable annuity contracts (''Contracts'') and certain other variable annuity contracts (''Future Contracts'') issued in the future by Golden American that are materially similar to the Contracts. Applicants also request that the order permit the deduction of a mortality and expense risk charge from the assets of any other separate accounts (''Future Accounts'') established in the future by Golden American in connection with the offering of the Future Contracts.

FILING DATE: The application was filed on May 11, 1995, and amended on August 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Mitchell M. Cox, Esq., Vice President, Assistant Secretary and Associate General Counsel, Golden American Life Insurance Company, 1001 Jefferson Avenue, 4th Floor, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representation

1. Golden American is a stock life insurance company authorized to do business in all jurisdictions, except New York. Golden American is a wholly-owned subsidiary of BT Variable, Inc. and a wholly-owned indirect subsidiary of Bankers Trust Company.

2. The Separate Accounts were established by Golden American as segregated asset accounts to fund variable annuity contracts. Account B is registered under the 1940 Act as a unit investment trust. Account D is registered under the 1940 Act as a non-diversified open-end management company. Registration statements on Form N–4 and Form N–3, registering the Contracts as securities under the

Securities Act of 1933 (''1933 Act'') have been filed with the Commission. Future Accounts also will be established by Golden American as segregated asset accounts. Future Accounts will be registered with the Commission either as unit investment trusts or open-end management companies under the 1940 Act. Registration statements will be filed with the Commission to register Future Contracts funded by the Future Accounts as securities under the 1933 Act.[1]

3. Account B presently has thirteen divisions, eleven of which are available for investment under the Contracts. Each investment division of Account B invests in shares of a corresponding series of The GCG Trust (''Trust''). Account D's only division, the Managed Global Account, invests directly in portfolio securities. (Account B and Account D divisions are referred to collectively as ''Divisions.'') Additional divisions may be established in the future within the Separate Accounts and may invest in shares of the Trust, another mutual fund or investment vehicle, or directly in portfolio securities. Divisions of Future Accounts established as unit investment trusts may invest in the Trust or other registered open-end management companies. Divisions of Future Accounts established as open-end management companies will invest directly in portfolio securities.

4. DSI, a wholly-owned subsidiary of BT Variable, Inc., is the distributor of the Contracts and of other contracts issued by Golden American. DSI has entered into and will continue to enter into sales agreements with broker-dealers to solicit for the sale of the Contracts through registered representatives licensed to sell securities and variable insurance contracts, including variable annuities. DSI is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. DIS also is registered with the Commission as an investment adviser.

5. The Trust is registered under the 1940 Act as an open-end management investment company. The Trust currently offers eleven series available for investment under the Contracts. DSI serves as manager to each series of the Trust.

6. The Contracts are deferred flexible premium variable annuity contracts that are issued on a group and individual basis. The Contracts may be purchased on a non-tax qualified basis (''Non-Qualified Contracts'') or in connection with retirement plans that quality for special federal tax treatment under Section 408 of the Internal Revenue Code (''Qualified Contracts'').

7. The Contracts may be obtained: (a) Under a flexible premium plan which provides for an initial premium payment and for optional subsequent premium payments; (b) pursuant to an exchange of other contracts issued by insurance companies not affiliated with Golden American effected in accordance with Section 1035 of the Internal Revenue Code of 1986, as amended; and (c) through an update of a deferred variable annuity contract previously issued by Golden American to incorporate the features of the Contract described herein.

8. The Contracts provide for the accumulation of values on a variable basis, a fixed basis, or both, and for the payment of periodic annuity benefits on a variable or fixed basis. Contract owners may allocate premium payments, or reallocate accumulation value under the Contracts, among the Divisions, Golden American's Fixed Account Option for specified Guarantee Periods[2] or, in those states where the fixed account is not available, Golden American's Fixed Interest Division, which is part of Golden American's general account.[3] Future Contracts offered through the Separate Accounts or Future Accounts also may offer a Fixed Account Option or Fixed Interest Division materially similar to those described herein.

9. The Contracts also provide for the payment of a death benefit, payable in a single sum or applied to any of the annuity options available under the Contracts. Contract owners generally may choose from among: (a) A standard death benefit equal to the greatest of (i) the accumulation value, (ii) total premium payments less partial withdrawals, and (iii) cash surrender value; or (b) either of two optional enhanced death benefits: the ''7% Solution'' and the ''Annual Ratchet''. A Contract owner may elect an optional death benefit only at issue, and only if the Contract owner or annuitant (when the Contract owner is other than an individual) is age 75 or less with respect to the 7% Solution option, or age 79 or less with respect to Annual Ratchet option. If an optional death benefit is selected, the death benefit will equal the greatest of: (a) accumulation value; (b) total premiums less partial withdrawals; (c) cash surrender value; and (d) the optional death benefit.

a. 7% Solution Option

Under the 7% Solution option, the death benefit payable equals: (i) the guaranteed death benefit from the prior valuation date;[4] plus (ii) interest calculated on the guaranteed death benefit for the current valuation period at an annual rate of 7%;[5] plus (iii) any additional premiums paid during the current valuation period; less (iv) any partial withdrawals made during the current valuation period. Each accumulated initial or additional premium payment, reduced by any partial withdrawal, will continue to grow at the guaranteed death benefit interest rate until reaching its maximum guaranteed death benefit. Such maximum guaranteed death benefit is initially equal to two times the initial or each additional premium paid. Thereafter, the maximum guaranteed death benefit as of the effective date of a partial withdrawal is reduced first by the amount of any partial withdrawal of earnings and second in proportion to the reduction in the accumulation value for any partial withdrawal of premium (in each case, including any associated market value adjustment and surrender charge incurred).

b. Annual Ratchet Option

Under the Annual Ratchet option, the death benefit payable equals: (i) The guaranteed death benefit from the prior valuation date;[6] less (ii) any partial withdrawals taken since the prior valuation date; plus (iii) additional premium paid since the prior valuation date.

c. Annually on each Contract anniversary on or prior to the Contract owner attaining age 80, the guaranteed death benefit is reset to equal the greater of (i) the guaranteed death benefit from the prior valuation date, less any partial

[1] Future Accounts may receive and invest premium payments under Future Contracts, as well as other variable annuity contracts, although relief sought herein will not apply to such other contracts.

[2] Golden American currently offers Fixed Allocations to which it credits fixed rates of interest for Guarantee Periods with durations of 1, 3, 5, 7 and 10 years, but reserves the right to increase or decrease the number of Guarantee Periods available.

[3] Applicants state that the Fixed Interest Division is not registered under the 1940 Act or under the 1933 Act in reliance upon Section 3(a)(8) of the 1933 Act.

[4] On the Contract date the guaranteed death benefit is equal to the initial premium.

[5] With respect to amounts in the Liquid Asset Division and Limited Maturity bond Division, and amounts in a Fixed Allocation or the Fixed Interest Division, however, the interest rate applied will be the applicable net rate of return for the Liquid Asset Division and the Limited Maturity Bond Division, and interest credited to the Fixed Allocation or Fixed Interest Division during the current valuation period, if such rate is less than an effective annual rate of 7%.

[6] On the Contract date the guaranteed death benefit is equal to the initial premium.

withdrawals taken since the prior valuation date, plus any additional premiums paid since the prior valuation date, or (ii) the accumulation value as of such date.

10. The following charges are deducted under the Contracts.

a. Premium Taxes. A premium tax charge, ranging from 0% to 3.5% of premiums, may be deducted from accumulation value for premium taxes assessed against Golden American by various states and local jurisdictions. Golden American reserves the right to change this amount to conform with changes in the law or in the state of residence of the Contract owner. The charge will be deducted on the annuity commencement date if premium taxes are incurred on such date. If a premium tax is incurred at the time of premium payment, deduction of the premium tax charge will be deferred until the Contract is surrendered, an excess partial withdrawal is taken, or the date annuity payments commence.

b. Contingent Deferred Sales Charge (''CDSC''). No sales charge currently is deducted from premium payments. A CDSC will be imposed as a percentage of premium payments being withdrawn if the contract is surrendered or an excess partial withdrawal is taken within seven years from the date Golden American receives and accepts each premium payment. The amount of the surrender charge at the time of surrender or excess partial withdrawal depends upon the number of complete years that have elapsed since the premium payment being withdrawn was made. In calculating the CDSC, Golden American treats premium payments as being withdrawn on a first-in first-out basis, and as being withdrawn before earnings. The CDSC as a percentage of each premium payment is determined as follows:

Surrender charge (as a percent of the premium payment being withdrawn	Complete years since receipt of premium
7	0–1
6	2
5	3
4	4
3	5
1	6
0	7 and over.

In no event will the CDSC exceed 8.5% of premium payments.

Amounts equal in the aggregate to 15% of the accumulation value may be withdrawn free of any CDSC each Contract year. Golden American will impose a CDSC on any partial withdrawal in excess of that amount; the CDSC will be deducted from the accumulation value in proportion to the accumulation value in each Division of the Separate Accounts, a Fixed Allocation or the Fixed Interest Division from which the withdrawal is taken. Golden American may waive the CDSC for a surrender or ''excess partial withdrawal'' where the Contract owner (i) receives qualified extended medical care on or after the first Contract anniversary for at least 45 days during any continuous 60 day period, or (ii) is first diagnosed by a qualifying medical professional, on or after the first Contract anniversary, as having a qualifying terminal illness.

c. Administrative Charge. A charge of $40 is deducted on the Contract anniversary and on surrender of the Contract for administrative costs expected to be incurred over the life of the Contracts. No administrative charge is deducted if the accumulation value or total premiums paid at the end of the Contract processing period equals or exceeds $100,000. The charge is deducted proportionately from the Divisions, Fixed Allocation or Fixed Interest Division. The charge is guaranteed not to increase for the duration of the Contracts. Applicants intend to rely on Rule 26a–1 under the 1940 Act to deduct this charge. Golden American does not anticipate any profit from this charge.

d. Excess Allocation Charge. No charge currently is deducted for reallocation of accumulation values. Golden American reserves the right to charge a maximum $25 fee for each reallocation made after the twelfth reallocation in a Contract year.[7] This charge will be deducted proportionately from each Division and Fixed Allocation or Fixed Interest Division from which such reallocation is made, unless the Contract owner has elected the option to have all charges against accumulation value deducted exclusively from the Liquid Asset Division. Applicants intend to rely on Rule 26a–1 under the 1940 Act to deduct this charge. Golden American does not expect to make a profit from this charge.

e. Asset Based Administrative Charge. A daily charge equal to an annual rate of 0.15% will be deducted from the assets in each Division for expenses incurred in administration of the Contracts and the Separate Accounts. The charge is guaranteed not to increase, and is designed to reimburse Golden American only for administrative costs expected to be incurred over the life of the Contracts. Applicants represent that the charge will be deducted in reliance on Rule 26a–1 under the 1940 Act. Golden American does not expect to make a profit from this charge.

f. Mortality and Expense Risk Charge. Golden American imposes charges as compensation for bearing certain mortality and expense risks under the Contracts. For Contracts with the standard death benefit or an Annual Ratchet death benefit, Golden American will deduct a daily mortality and expense risk charge from the Separate Accounts at an annual rate not to exceed a maximum 1.25% of the value of the average daily net asset in each Division. Of the 1.25% mortality and expense risk charge associated with the Annual Ratchet death benefit, approximately 0.90% is allocable to mortality risks and 0.35% to expense risks. If the Contract owner selects the standard death benefit, the mortality and expense risk charge will decrease. For Contracts with the 7% Solution death benefit, Golden American will deduct a daily mortality and expense risk charge at an annual rate of 1.40% (of which 0.35% is allocable to expense risks, 0.90% to mortality risks and 0.15% to the additional enhanced death benefit) of the value of the average daily net assets in each Division. This charge may be a source of profit for Golden American and the excess may be used for, among other things, the payment of distribution expenses.

Golden American will assume two mortality risks under the Contracts: (1) That the annuity rates under the Contracts cannot be changed to the detriment of Contract owners even if annuitants live longer than projected; and (2) that Golden American may be obligated to pay a claim for a standard death benefit or an optional death benefit in excess of a Contract owner's cash surrender value. Golden American also will assume an expense risk through its guarantee not to increase the charges for issuing the Contracts and administering the Contracts and the Separate Accounts, regardless of its actual expenses.

g. Deductions for Other Taxes. No charge currently is imposed for federal, state or local income taxes attributable to the Separate Accounts. Golden American may make such a charge in the future, subject to necessary regulatory approvals. Charges also may be made for any other applicable taxes or economic burden resulting from the application of tax laws that Golden

[7] Any reallocations made pursuant to the dollar cost averaging program will not be included in determining if an excess allocation charge will be imposed.

American determines to be properly attributable to the Separate Accounts.

h. Expenses of the Trust and Separate Accounts. Net assets of Account B and Account D will reflect the investment advisory fee and other expenses incurred by the Trust and by the Managed Global Account, respectively.

11. Applicants request that the exemptive relief also apply to Future Contracts issued by Golden American through the Separate Accounts or Future Accounts which may invest in the Trust or in shares of other registered investment companies, or directly in a portfolio of securities. Applicants state that a Future Contract will be deemed a materially similar contract if it provides the same rights, benefits and obligations as the Contract described herein and has charges equal to or less than the charges assessed under the Contracts, including the mortality and expense risk charge, enhanced death benefit charge and CDSC for the Contracts described herein. In particular, the maximum surrender charge will be 7% of a premium payment, and each Contract year a Contract owner may withdraw up to 15% of accumulation value free of any CDSC that otherwise might apply. After a premium payment has been invested for 7 years, no CDSC will apply. Moreover, in no event will the CDSC exceed 8.5% of premium payments made.

Applicants Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes or persons, securities or transactions, from the provisions of the 1940 Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Exemptive Relief Under Section 26(a)(2) and 27(c)(2) of the 1940 Act

2. Applicants request an order under Section 6(c) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of chargers for mortality and expense risks, including the enhanced death benefit charge, under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts and to Future Accounts is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. Without the requested relief, Golden American would have to request and obtain exemptive relief for each new Future Account it establishes and each class of Future Contracts it issues. Applicants represent that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this application.

4. Applicants further state that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity policy market by eliminating the need for Golden American to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Golden American to seek exemptive relief repeatedly with respect to the issues addressed in this Application. Applicants assert that the delay and expense involved would impair Golden American's ability to take advantage effectively of business opportunities as they arise and would disadvantage investors as a result of Golden American's increased overhead expenses.

5. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

6. Applicants submit that the mortality and expense risk charges are reasonable and proper insurance charges. Applicants represent that the mortality and expense risk charges are within the range of industry practice for comparable variable annuity contracts. This representation is based upon Golden American's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Applicants state that Golden American will maintain at its home office and make available to the Commission, upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Applicants further represent that the additional charge for the enhanced death benefit is reasonable in relation to the risks assumed by Golden American in connection with the 7% Solution option. In arriving at this determination, Golden American ran a large number of computer generated trials at various issue ages and determined actuarially the level cost of providing the enhanced death benefits. Based on this analysis, Golden American determined that an additional charge equal to 0.15% of the net assets in the Separate Accounts was a reasonable charge. Golden American undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the additional charge for the enhanced death benefit under the 7% Solution option is reasonable in relation to the risks assumed by Golden American under the Contracts.

8. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses borne by Golden American. Golden American has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Contract owners. Golden American will keep at its home office and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

9. With respect to any Future Contracts offered through the Separate Accounts and any Future Accounts, Golden American undertakes that it will not offer any such Future Contracts without first making the determination that the mortality and expense risk charge was within the range of industry practice, that any additional charge for any enhanced death benefit was reasonable in relation to the risks assessed, and that there is a reasonable likelihood that proposed distribution financing arrangements will benefit the affected Separate Accounts or Future Accounts and existing Contract owners and Future Contact owners.

Further, the basis for each such determination shall be set forth in a memorandum which will be maintained by Golden American at its home office and which will be made available to the Commission.

10. Applicants represent that Account B and any Future Account established as a unit investment trust will invest only in a management investment

company that has undertaken, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of any such investment company, as defined in the 1940 Act, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses. Applicants further represent that Account D undertakes, and any Future Account established as an open-end management company will undertake, in the event that it adopts a plan under Rule 12b–1 to finance distribution expenses, to have a majority of its board of directors who are not interested persons, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Request for Exemptive Relief From Section 12(b) of the 1940 Act and Rule 12b–1

11. Section 12(b) of the 1940 Act makes it unlawful for a registered investment company from acting as a distributor of securities of which it is the issuer, except through an underwriter. Rule 12b–1 prohibits any such company from directly or indirectly financing distribution of the company's shares except in compliance with the Rule's requirements. Rule 12b–1 requires that a company financing distribution of its shares formulate a written plan describing all material aspects of the proposed arrangement, and that the plan be approved initially by the company's shareholders, directors and disinterested directors. The directors must vote annually to continue such a plan, and the directors must conclude that there is a reasonable likelihood that implementation or continuation of the plan will benefit the company and its shareholders.

12. Applicants expect to finance the expenses of distributing the Contracts through use of Golden American's general assets, which may be attributable in part to the surplus from mortality and expense risk charges. Golden American requests an order under Section 6(c) of the 1940 Act for exemptive relief from Section 12(b) of the 1940 Act and Rule 12b–1 thereunder, insofar as the proposed distribution financing arrangement might be deemed to involve the direct or indirect use of assets in Account D, or in any Future Account established as an open-end management company, for distribution. Applicants represent that this aspect of the requested relief is solely ''defensive,'' i.e., to clarify that the current distribution financing is not subject to Section 12(b) or Rule 12b–1 thereunder. Applicants contend that the requested relief is not intended to cover the imposition of a separate charge for distribution expenses against the assets in Account D. Applicants represent that no separate charge for distribution expenses will be assessed on the assets of Account D or any Future Account organized as an open-end management company unless and until the charge complies with the requirements of Rule 12b–1.

13. Applicants assert that Rule 12b–1 was not intended to apply to managed accounts, that the Rule's provisions are directed only at traditional mutual funds and should not be applied to managed accounts, and that the protections of Rule 12b–1 are not necessary in the case of managed accounts. Applicants state that the Commission's review under Sections 26 and 27 of the 1940 Act of the reasonableness of asset charges of managed accounts, and explicit prospectus disclosure that the asset charge may be used for distribution expenses, provide sufficient protection for Contract owners and obviates the need for a managed account to comply with the requirements of Rule 12b–1.

14. Applicants assert that application of Rule 12b–1 to managed accounts would produce a burdensome and inequitable treatment of these accounts, would place them at an unfair disadvantage with respect to unit investment trusts offering similar annuity contracts, and would create an artificial distinction between managed accounts and unit investment trusts not justified by policy considerations.

Conclusion

Applicants assert that for the reasons and based upon the facts set forth above, the requested exemptions from sections 12(b), 26(a)(2)(C) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder to deduct a mortality and expense risk charge under the Contracts and Future Contracts offered by the Separate Accounts or by Future Accounts are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23507 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–02–M

[Release No. 35–26375]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 15, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 10, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc., et al. (70–8471)

Columbia Gas System, Inc. (''Columbia''), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, seventeen wholly-owned subsidiary companies of Columbia,[1] all of which are engaged in

[1] Columbia Gas of Pennsylvania, Inc. (''Columbia Pennsylvania''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. (''Columbia Ohio''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. (''Columbia Maryland''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. (''Columbia Kentucky''), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. (''Commonwealth Services''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. (''Columbia Gulf''), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development Corp. (''Columbia Development''), One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc. (''Columbia Resources''), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp.

Continued

the natural gas business, twelve subsidiary companies of TriStar Ventures (''TriStar Ventures Subsidiaries''),[2] Columbia Gas Transmission Corp. (''Gas Transmission'', 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Energy Marketing Corp. (''Energy Marketing''), 2581 Washington Road, Pittsburgh, Pennsylvania 15241, have filed a post-effective amendment to the application-declaration, previously filed by all the applicants-declarants but for Gas Transmission and Energy Marketing, under Sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) (''Order''), Columbia, and fourteen of the subsidiary companies (''Subsidiaires''),[3] were authorized to recapitalize Columbia Gulf, Columbia Development, and Columbia Coal, to implement the 1995 and 1996 Long-Term and Short-Term Financing Programs of the Subsidiaries, and to continue the Intrasystem Money Pool (''Money Pool'') through 1996.

By order dated March 15, 1995 (HCAR No. 26251), the TriStar Ventures Subsidiaries were authorized to invest in, but not to borrow from, the Money Pool.

The applicants-declarants now seek Commission authorization for Gas Transmission and Energy Marketing to invest in, but not to borrow from, the Money Pool, which will continue to be operated in accordance with the terms of the Order.

(''Columbia Coal''), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp. (''Columbia Services''), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp. (''Service Corporation''), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp. (''Columbia Propane''), 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc. (''Commonwealth Propane''), 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. (''TriStar Ventures''), 20 Montchanin Road, Wilmington, Delaware 19807; TriStar Capital Corp. (''TriStar Capital''), 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp. (''Columbia Atlantic''), 20 Montchanin Road, Wilmington, Delaware 19807; and Columbia LNG Corp. (''Columbia LNG''), 20 Montchanin Road, Wilmington, Delaware 19807.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Montchanin Road, Wilmington, Delaware 19807.

[3] Columbia Pennsylvania, Columbia Ohio, Columbia Maryland, Columbia Kentucky, Commonwealth Services, Columbia Gulf, Columbia Development, Columbia Resources, Columbia Coal, Service Corporation, Columbia Propane, Commonwealth Propane, TriStar Capital, and Columbia Atlantic.

Georgia Power Co. (70–8665)

Georgia Power Company (''GPC''), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, a wholly owned public utility subsidiary company of The Southern Company (''Southern''), a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rules 44 and 54 thereunder.

GPC proposes to purchase from Florida Power Corporation (''FPC''), a nonaffiliate of GPC or Southern, a one-third undivided ownership interest in the Intercession City Facility Combustion Turbine (''Facility'') pursuant to the Intercession City Siemens Unit Purchase and Ownership Participation Agreement dated June 8, 1994 between GPC and FPC (''Ownership Agreement'') and the Intercession City Siemens Unit Step-Up Transformer Purchase Agreement dated June 8, 1994 between GPC and FPC. The Facility includes one complete Siemens V84.3 combustion turbine-generating unit and a step-up transformer.

The purchase price for the assets to be acquired by GPC at the closing will be one-third of the costs of construction incurred with respect to the Facility, which are currently estimated to be $13,137,680 (''Purchase Price''). To such amount shall be added an amount to compensate FPC for federal and state income taxes payable due to differences in book and tax basis of the equity component of the allowance for funds used during construction with respect to the sale by FPC of such undivided ownership interest in the Facility, which taxes are approximately $40,000.

At the closing, which is currently scheduled to occur in January 1996, FPC will furnish to GPC a release from any and all mortgages, deeds to secure debt, or other security interests with respect to the undivided ownership interest in the Facility. In addition, GPC shall pay FPC for the use of common facilities during the construction and testing period, which is stipulated to be $87,500, and carrying charges with respect to the fuel inventory maintained during the testing period, which is approximately $9,491. FPC will adjust the Purchase Price within one hundred eighty (180) days after the closing to account for any necessary true-ups and inform GPC of any amounts to be reimbursed to GPC or any amounts owned by GPC with respect to the Purchase Price.

Pursuant to the Long Term Lease Agreement dated June 8, 1994, between GPC and FPC, FPC shall lease to GPC an undivided one-third interest in the real property on which the Facility will be developed. The annual rent for the leasehold interests conveyed to GPC shall be $300.00 per year plus all Florida sales taxes applicable thereto.

The Facility will be managed, controlled, operated and maintained by FPC on its own behalf and as agent for GPC in accordance with the terms and conditions set forth in the Ownership Agreement and the Intercession City Siemens Unit Operating Agreement dated June 8, 1994 between GPC and FPC (''Operating Agreement''). FPC and GPC shall pay all future costs of construction on a pro rata basis on their percentage undivided ownership interests in the Facility at the time such costs are incurred.

FPC and GPC will share operating costs and fuel costs. Fixed operation and maintenance costs and fixed fuel costs shall be allocated between FPC and GPC in proportion to their respective percentage undivided ownership interests in the Facility. Variable operation and maintenance costs and variable fuel costs incurred by FPC during the months of June, July, August and September (''Summer Period'') shall allocated solely to GPC and variable operation and maintenance costs and variable fuel costs incurred by FPC during the months of October, November, December, January, February, March, April and May (''Winter Period'') shall be allocated solely to FPC. In addition, GPC will pay a share of the monthly administrative and general costs of operating the Facility pursuant to the terms of the Operating Agreement.

GPC will be entitled to the net capacity and the net energy output of the Facility at all times during the Summer Period. FPC will be entitled to the net capacity and the net energy output of the Facility at all times during the Winter Period. The Facility is currently scheduled to go into commercial operation in January 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23506 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21363; 812–9494]

Scudder Investment Trust, et al.; Notice of Application

September 18, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Scudder Investment Trust, on behalf of its series Scudder Growth and Income Fund (the ''Fund''), Scudder Cash Management Investment Trust (the ''Trust''), Scudder Trust Company (the ''Trustee''), Scudder, Stevens & Clark, Inc. (the ''Adviser''), and any other registered management investment company, except for an investment company that holds itself out as a money market fund in accordance with rule 2a–7, that in the future is advised by the Adviser or any person controlled by or under common control with the Adviser (together with the Fund, the ''Funds'').[1]

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 17(b) of the Act that would grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to use cash collateral received from the borrowers of their portfolio securities to purchase shares of the Trust, an affiliated private investment company, pursuant to a securities lending program.

FILING DATES: The application was filed on February 22, 1995, and amended on June 1, 1995 and August 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 345 Park Avenue, New York, New York 10154.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a series of Scudder Investment Trust, a registered open-end management investment company organized as a Massachusetts business trust. The Fund invests in a variety of equity and convertible securities in accordance with its investment objectives and policies. The Adviser manages the daily investment and business affairs of the Funds, subject to the policies established by the trustees of each of the Funds.

2. The Trust is a newly formed New Hampshire investment trust of which the Trustee, a New Hampshire banking corporation, is the sole trustee. It is a private investment company excluded from the definition of ''investment company'' pursuant to section 3(c)(1) of the Act. The Trust intends to meet the maturity, quality, and diversification requirements set forth in paragraphs (c)(2), (3), and (4), and (d) of rule 2a–7 under the Act. The Trust also intends to offer daily redemption of its shares and to use the ''amortized cost methods,'' as defined in rule 2a–7, to determine the Trust's net asset value per share. The Trustee will adopt procedures that are designed to stabilize the Trust's net asset value per share at a single value. In these respects, the Trust intends to operate as a money market fund.

3. The Trustee will cause the Trust to retain the Adviser to manage the investments of the Trust, subject to the Trustee's overall supervision. The Adviser owns substantially all of the common stock of the Trustee; therefore, the Trustee and the Adviser are affiliated persons of one another under section 2(a)(3) of the Act, and the Trustee is an affiliated person of an affiliated person of the Funds.

4. The Fund has the ability to increase its income by lending portfolio securities to registered broker-dealers deemed by the Adviser to be of good standing. These loans may not exceed one third of the Fund's total assets taken at market value. The Fund and NationsBank of Texas, N.A. (the ''Agent'') have entered into an agreement pursuant to which the Fund is one of the participants in a securities lending program (the ''Program'') administered by the Agent. The Program conforms to the securities lending guidelines established in a number of no-action letter issued by the SEC staff.[2] The Agent has been appointed subcustodian of the Fund and has entered into a subcustody agreement with State Street Bank and Trust Company, the custodian of the Fund.

5. Under the Program, the Agent enters into agreements with borrowers to lend them portfolio securities of the Fund (''Securities Loan Agreements''). Pursuant to the Securities Loan Agreements, the Agent delivers Fund portfolio securities to borrowers, who agree to return such securities on demand. The Agent may enter into Securities Loan Agreements only with borrowers from a list approved by the Fund's board of trustee's. The list also provides the maximum percentage of the Fund's total lendable assets that may be loaned to each borrower.

6. The Agent currently is authorized to accept only cash collateral for the loaned securities, although it may accept securities or letters of credit if the Fund consents. The Fund may invest the cash collateral itself or direct the Agent to invest the collateral. The cash collateral received for the securities loaned by the Fund may be reinvested in shares of registered or unregistered investment companies acceptable to the Adviser that meet the quality, maturity, and diversification requirements of rule 2a–7 under the Act. The Agent also may invest cash collateral in other instruments, subject to certain parameters.

7. Net annual interest income earned from the investment of cash collateral is divided between the Fund and the Agent. The Adviser receives no part of this return. Under each Securities Loan Agreement, the borrower receives a specified cash collateral fee, computed daily based on the amount of cash held as collateral at such rates as the borrower and the Agent may agree. The cash collateral fee is not based on the investment return of the cash collateral. Any excess return is divided between the Agent and the Fund. The Agent may receive a fee to pass on to the providers

[1] The Adviser currently advises other investment companies that presently do not intend to rely on the requested order, however, any such company may rely on the requested order in the future in accordance with the representations and conditions of the order.

[2] *See, e.g., Washington Square Cash Fund, Inc.* (pub. avail. July 9, 1990); *The Adams Express Company* (pub. avail. Oct. 8, 1984); and *State Street Bank & Trust Co.* (pub. avail. Sept. 29, 1972).

of related services, such as investment management, custody, and accounting or audit services.

8. Applicants seek an order to permit the Fund (and any other Funds that in the future determine to lend their portfolio securities) to purchase shares of the Trust using cash collateral received from the borrowers of its portfolio securities. By investing cash collateral in shares of the Trust, applicants anticipate that the Fund can reduce its transaction costs, create more liquidity, enjoy greater returns on the cash collateral, and achieve greater diversification with respect to its investment. Therefore, the board of trustees of the Fund has approved the investment of cash collateral in shares of the Trust.

9. Shares of the Trust are offered to participants in the Program, as well as to other institutional investors in reliance on the exemption provided by Regulation D under the Securities Act of 1933. The shares, together with any other outstanding securities (other than short-term paper) of the Trust, will not be beneficially owned by more than one hundred persons. the Trust is not making and presently does not propose to make a public offering of its shares or other securities. The Trust intends to enter into an advisory contract with the Adviser, under which the Adviser will make investment decisions with respect to Trust assets and administer the Trust in accordance with the declaration of trust and the policies of the Trust.

10. The Adviser will receive an annualized fee from the Trust. The shareholders of the Fund, however, will not be subject to the imposition of duplicative advisory fees. An amount of advisory fee equal to the net asset value of the Fund's holdings in the Trust multiplied by the applicable Trust management fee rate charged by the Adviser will be waived in the overall calculation of the Fund's advisory fees.

11. The Agent will be paid a fee by the Trust for performing custodial, administrative, and transfer agency functions. Scudder Fund Accounting, a subsidiary of the Adviser, will be paid a fee by the Trust for providing accounting and other administrative services to the Trust. Together, the fees paid by the Trust to the Agent and Scudder Fund Accounting will not exceed three basis points. In addition, the Trustee will receive compensation from the Trust equal to one basis point of the market value of the assets of the Trust.

Applicants' Legal Analysis

1. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. As the investment manager of the Funds, the Adviser is an affiliated person of the Funds under section 2(a)(3) of the Act. Because the Adviser owns substantially all the shares of common stock of the Trustee, the Trustee may be considered an affiliated person of an affiliated person of the Funds. The Trust may be considered an affiliated person of an affiliated person of the Funds under section 2(a)(3) because the Adviser, as owner of substantially all the shares of common stock of the Trustee, may be deemed to control the Trust. Accordingly, the sale of shares of the Trust to the Funds, and the redemption of such shares from the Funds, would be prohibited under section 17(a).

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwise would be prohibited by section 17(a).

3. Applicants believe that the terms of the proposed transactions are reasonable and fair and consistent with the general purposes of the Act as well as with the policy of the Fund as recited in its registration statement. The Fund will be treated like any other investor in the Trust. The Fund will purchase and sell shares of the Trust on the same terms and on the same basis as shares are purchased and sold by all other shareholders of the Trust. Applicants also state that the transactions will not involve any duplicative advisory fees because an amount equal to the net asset value of the Fund's holdings in the Trust multiplied by the applicable Trust advisory fee rate charged by the Adviser will be waived in the overall calculation of the advisory fees of the Fund. Permitting the Fund to invest cash collateral in the Trust enables the Fund to invest in a vehicle that is similar to a money market fund in terms of the liquidity, diversity, and quality of its investment at a cost that is expected to be significantly lower than the cost typically incurred when investing in a registered money market fund. Therefore, applicants believe that the proposed transactions are in the best interests of the Fund and its shareholders.

4. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The Funds, by purchasing shares of the Trust, the Adviser, by managing the portfolio securities of the Funds and the Trust at the same time that the Funds' collateral is invested in shares of the Trust, the Trust, by selling shares to and redeeming them from the Funds, and the Trustee, by serving as trustee of the Trust at the same time that the Trust sells shares to and redeems them from the Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d–1.

5. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

6. Applicants believe that the proposal satisfies these standards. The Fund will invest in shares of the Trust on the same basis as any other shareholder. All investors in the Trust will be subject to the same eligibility requirements imposed by the Trust and all shares of the Trust will be priced in the same manner and will be redeemable under the same terms. In addition, the Fund will be able to invest in a vehicle that is similar to a registered money market fund at a cost that is expected to be significantly lower.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. None of the Funds will enter into a securities lending program without the approval of a majority of their independent directors or trustees. Such directors or trustees will also evaluate the securities lending arrangement and its results no less frequently than annually, and determine that any

investment of cash collateral in the Trust is in the best interest of the shareholders of the Fund.

2. With respect to any Fund that enters into a securities lending program (a ''Lending Fund''), the Adviser will reduce its advisory fees charged to the Lending Fund by an amount (the ''Reduction Amount'') equal to the net asset value of the Lending Fund's holdings in the Trust multiplied by the rate at which advisory fees are charged by the Adviser to the Trust. Any fees remitted or waived pursuant to this condition will not be subject to recoupment by the Adviser or its affiliated persons at a later date.

3. If the Adviser waives any portion of its fees or bears any portion of the expenses of the Lending Fund (an ''Expense Waiver''), the adjusted fees for the Lending Fund (gross fees less Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees then will be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Adviser also will reimburse the Lending Fund in an amount equal to such excess.

4. Investment in shares of the Trust will be in accordance with each Lending Fund's respective investment restrictions and will be consistent with its policies as recited in its registration statement and prospectus.

5. The Trust will maintain a portfolio that complies with the maturity, quality, and diversification requirements of rule 2a–7(c) (2), (3), (4), and (d) under the Act. A Lending Fund may purchase shares of the Trust if the Adviser determines on an ongoing basis that the Trust is in compliance with paragraphs (c)(2), (c)(3), (c)(4), (c)(6), and (d) of rule 2a–7. The Adviser shall preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. This record will be subject to examination by the SEC and its staff.

6. The Trust will comply with the requirements of sections 17 (a), (d), and (e), and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Fund, the Trust will comply with section 22(e) of the Act. The Adviser shall, subject to approval by the Trustee, adopt procedures designed to ensure that the Trust complies with sections 17 (a), (d), and (e), 18, and 22(e). The Adviser will also periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

7. The Trust will value its shares, as of the close of business on each business day, as follows: The Trust will use the ''amortized cost method,'' as defined in rule 2a–7, to determine the Trust's net asset value per share. In this regard, the Trust will comply with rule 2a–7(c)(6), except that the Adviser, subject to approval by the Trustee, shall adopt the procedures described in that provision and the Adviser shall monitor such procedures and take such other actions as are required to be taken by a board of directors pursuant to that provision.

8. The Adviser, subject to approval by the Trustee, will adopt procedures that are designed, taking into account current market conditions and the Trust's investment objectives, to stabilize the Trust's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at a single value. These procedures will be reviewed annually by the board of trustees of each Lending Fund.

9. The shares of the Trust will not be subject to a sales load, redemption fee, or any asset-based sales charge.

10. Each Lending Fund will purchase and redeem shares of the Trust as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust. A separate account will be established in the shareholder records of the Trust for the account of each Lending Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95–23560 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36242; File No. SR–CBOE–95–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Members' Compliance with Position and Exercise Limits for Non-CBOE Listed Options

September 18, 1995.

On April 20, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rules 4.11, ''Position Limits,'' and 4.12. ''Exercise Limits,'' to require CBOE members who trade non-CBOE listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.[3]

Notice of the proposed rule change appeared in the Federal Register on May 31, 1995.[4] No comments were received on the proposed rule change.[5]

The CBOE proposes to amend Exchange Rules 4.11 and 4.12 to require CBOE members who trade non-CBOE listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are affected.[6] According to the CBOE, the proposal is designed to eliminate a

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concern. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] *See* Securities Exchange Act Release No. 35759 (May 24, 1995), 60 FR 28432.

[5] The CBOE amended its proposal to indicate that the CBOE will also apply the position limit exemptions, interpretations, and policies of the exchange where the transactions are effected. *See* Letter from Margaret G. Abrams, Attorney, CBOE, to Yvonne Fraticelli, Attorney, Division of Market Regulation (''Division''), Commission, dated September 6, 1995 (''Amendment No. 1'').

[6] The proposal applies to transactions in index options as well as equity options. Telephone conversation between Margaret G. Abrams, Attorney, CBOE, and Yvonne Fraticelli, Attorney, Options Branch, Division, Commission, on September 14, 1995.

jurisdictional loophole whereby a CBOE member who exceeds position or exercise limits on another options exchange in an option class not listed on the CBOE and who is not a member of the other exchange falls outside of both the CBOE's and the other options exchange's jurisdiction for position and exercise limit purposes.[7]

Specifically, although CBOE Rules 4.11 and 4.12 prohibit excessive positions or exercises in CBOE listed option contracts, they do not currently prohibit a CBOE member from exceeding applicable limits set by another exchange for non-CBOE listed option contracts. If the CBOE member is not a member of the other exchange which lists the option contracts, then the other exchange cannot enforce its position and exercise requirements against the CBOE member.

The proposed amendments will extend CBOE Rules 4.11 and 4.12 to apply to option contracts dealt in on any exchange (rather than only to option contracts dealt in on the CBOE) by requiring a CBOE member who is effecting transactions in non-CBOE listed option contracts on another exchange, of which he or she is not a member, to comply with the position and exercise limits set by the exchange on which the transaction is effected.[8] Thus, a CBOE member's customer transactions in non-Exchange listed options will be brought within the CBOE's jurisdiction for position and exercise limit purposes when the exchange on which the excessive transactions are effected does not have member jurisdiction over the CBOE member.

In addition, the CBOE proposes to amend the text of CBOE Rule 4.12 to replace references to the Exchange's previous equity option position limits with reference to the Exchange's current equity option position limits, which were excluded inadvertently from the text of CBOE Rule 4.12 when the equity option position limits were increased in December 1993.[9]

Finally, the CBOE proposes to amend CBOE Rules 4.11 and 4.12 to indicate that the Exchange's position and exercise limits are now established by the staff of the CBOE, rather than by the CBOE's Board of Directors (''Board'').[10]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[11] in that it is designated to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the CBOE has noted that Exchange Rules 4.11 and 4.12 do not currently prohibit CBOE members from exceeding the position and exercise limits set by another exchange for non-CBOE listed option contracts. Thus, if the CBOE member is not a member of the exchange which lists the options, then neither the CBOE or the exchange that lists the options is able to enforce its position and exercise limits against the CBOE member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring a CBOE member who trades non-CBOE listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.[12]

As the Commission has noted in the past,[13] options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designated to minimize the potential for mini-manipulations[14] and for corners or squeezes of the underlying market. They also impose a ceiling on the maximum position an investor with inside corporate or market information can establish through the use of options. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by CBOE members by bringing a CBOE member's customer transactions in non-CBOE exchange listed options within the CBOE's jurisdiction for position and exercise limits purposes. The Commission also notes that violations under CBOE Rules 4.11 and 4.12 for transactions that do not comply with the position and exercise limits of another exchange will be subject to the same fines or disciplinary action for position and exercise limit violations as those applicable to CBOE options.[15]

The Commission believes that the proposal to amend the text of CBOE Rule 4.12 to reflect the current position limits for equity options, which were not included in the text of CBOE Rule 4.12 when the equity option position limits were increased in 1993, should benefit market participants by ensuring the accuracy of CBOE Rule 4.12. The text of CBOE Rule 4.12, as amended, will reflect the Exchange's current equity option position and exercise limits.

The Commission also believes that it is reasonable for the Exchange to amend CBOE Rules 4.11 and 4.12 to indicate that the Exchange's position and exercise limits are now established by the staff of the CBOE, rather than by the CBOE's Board. In this regard, as noted above, any proposal to increase the Exchange's position and exercise limits must be approved by the Commission.

The Commission finds good cause for approving Amendment No. 1 to the proposal on an accelerated basis. Amendment No. 1 to the proposal strengthens and clarifies the CBOE's proposal by indicating that the CBOE will apply the position limit exemptions, interpretations, and policies of the exchange where the transactions are effected. Accordingly, the Commission believes it is appropriate and consistent with Sections 6(b)(5) and 19(b) (2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

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[7] The Commission notes that, generally, the options exchanges have adopted uniform options position and exercise limits.

[8] The CBOE will also apply the position limit exemptions, interpretations, and policies of the exchange where the transactions are effected. *See* Amendment No. 1, *supra* note 5.

[9] *See* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

[10] The Commission notes that any proposal to revise the Exchange's position and exercise limits must be filed with, and approved by, the Commission pursuant to Section 19(b)(2) under the Act.

[11] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[12] Under the proposal, the CBOE will also apply the exemptions, interpretations, and policies of the exchange where the options transactions are effected. *See* Amendment No. 1, *supra* note 5.

[13] *See, e.g.,* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE–93–43).

[14] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[15] *See* CBOE Rule 17.50, ''Imposition of Fines for Minor Rule Violations.'' Violations of the Exchange's exercise limit rules are subject to disciplinary action under Chapter 17, ''Discipline,'' of the CBOE's rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted October 13, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the amended proposed rule change (File No. SR-CBOE–95–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23558 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36245; File No. SR–NASD–95–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Effective Date of an Amendment to the Prompt Receipt and Delivery of Securities Interpretation Concerning Affirmative Determinations Made in Connection with Short Sales

September 18, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASD is proposing to change the effective date of a rule change previously approved by the Commission regarding an amendment to the NASD's Prompt Receipt and Delivery of Securities (''Interpretation'') issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice that deals with affirmative determinations made by members in connection with short sales.[2] Specifically, the NASD proposes to delay, until February 20, 1996, the effectiveness of the portion of the rule change that prohibits NASD members from using blanket or standing assurances that securities are available for borrowing to satisfy their affirmative determination requirements. An affirmative determination as to stock availability and annotation of that affirmative determination must still be made for each and every transaction, however. Thus, a firm that relies on a fax sheet or other standing assurance as to stock availability must annotate such reliance for each short sale transaction.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On September 12, 1994, the SEC approved an NASD rule change (SR–NASD–94–32) that amended the Interpretation.[3] Specifically, the new rule requires members to annotate, on the trade ticket or on some other record maintained for that purpose by the member firm, the following information:

1. If a customer assures delivery, the member must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether they will be delivered to the firm within time for settlement; or

2. If the member locates the stock, the member must annotate the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date; and the number of shares needed to cover the short sale.

The amendment also provided that the manner by which a member or person associated with a member annotates compliance with this ''affirmative determination'' requirement (e.g., marking the order ticket, recording inquiries in a log, etc.) is left for each individual firm to decide. In addition, the amendment clarified that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a ''blanket'' or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement (''standing assurance provision''). Thus, by requiring firms to annotate each and every affirmative determination, the amendment made clear the NASD's policy that firms cannot rely on daily fax sheets of ''borrowable stocks'' to satisfy their affirmative determination requirements under the Interpretation.

In NASD Notice to Members 94–80, the NASD announced that the effective date of the amendments to the Interpretation would be November 30, 1994. Based upon feedback from a broad spectrum of NASD members that compliance with the amended Interpretation would not be possible by November 30, 1994, due to a variety of operational adjustments that needed to be made, the NASD decided to postpone the effective date of the amendments to the Interpretation until January 9, 1995,

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[16] 15 U.S.C. § 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1994).

[1] The proposed rule change was initially submitted on August 31, 1995, but was amended prior to publication in the Federal Register. The amendment was intended to clarify the requirements imposed on NASD members with respect to the annotation requirement. The amendment is available for copying in the Commission's Public Reference Room.

[2] *NASD Manual.* Rules of Fair Practice, Article III, Sec. 1, (CCH) ¶ 2151.04.

[3] *See* Securities and Exchange Act Release No. 34653 (September 12, 1994), 59 FR 47965 (September 19, 1994).

to give member firms sufficient time to prepare for the rule change.[4]

In addition, in light of the NASD's concern that the prohibition against the use of daily fax sheets and other ''blanket'' or standing assurances may have created an unnecessarily burdensome regulatory requirement of NASD members, the NASD decided to postpone the effective date of the standing assurance provision until August 1, 1995, to give the NASD the opportunity to determine whether to amend or delete the rule or let it go into effect as approved by the SEC.[5] The effective date for the standing assurance provision was extended once more, until September 5, 1995.[6] Because the NASD is still in the process of evaluating comments raised by market participants concerning the provision, the NASD is proposing to further postpone the effective date of the standing assurance provision until February 20, 1996.[7]

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires that the rules of the NASD, among other things, remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest, in that delaying the effective date of the standing assurance provision until February 20, 1996, will assist members in complying with the new rule. Similarly, the NASD believes that delaying the effective date of the standing assurance provision until February 20, 1996, will give the NASD and its members ample time to consider whether to retain this provision or modify it to better reflect industry practice, thereby avoiding member firm confusion and ensuring that NASD rules are crafted to achieve their regulatory goals in a manner that is the least burdensome for the membership.

B. Self-Regulatory Organization's Statement on Burden on Competing

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and paragraph (e) of Rule 19b–4 promulgated thereunder in that it changes the effective date of a new provision of the NASD's rules and is therefore a policy relating to the administration or enforcement (i.e., the effective date) of a new rule of the Association.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–38 and should be submitted by October 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23559 Filed 9–21–95; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* NASD Special Notice, dated November 29, 1994.

[5] *See* Securities Exchange Act Release No. 35207 (January 10, 1995), 60 FR 3445 (January 17, 1995).

[6] *See* NASD Special Notice, dated July 28, 1995.

[7] Of course, if the standing assurance provision were to be modified or deleted prior to February 20, 1996, pursuant to a rule proposal approved by the Commission, the provision would not go into effect in its current form on February 20, 1996.

[8] 17 CFR 200.30(a0(12).

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 will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the Federal Register on September 1, 1995, the following information collections have been proposed or will require extension of the current OMB approvals.

(Call the Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA Reports Clearance Officer: Charlotte S. Whitenight.

1. Psychiatric Review Techniques—0960–0413. The information on form SSA–2506 is used by the Social Security Administration to evaluate the severity of mental impairments in adults who have filed a claim for disability benefits. The affected public consists of State Disability Determination Agencies who are responsible for reviewing the claim from beneficiaries/recipients and who report their findings to SSA.

Number of Respondents: 54.

Frequency of Response: 15,822 per State Agency.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 213,594 hours.

2. Questionnaire for Children Claiming SSI Benefits—0960–0499. The form SSA–3881 is used by the Social Security Administration to obtain information which is needed to evaluate disability in children claiming supplemental income payments. The respondents are such claimants whose alleged disability does not meet our medical listings.

Number of Respondents: 177,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 59,000 hours.

3. Annual Registration Statement Identifying Separated Participants with Deferred Benefits—0960–NEW. The information on form Schedule SSA is used by the Social Security Administration to provide beneficiaries information about their future pension benefits. The respondents are administrators of private pension plans.

Number of Respondents: 345,544.
Frequency of Response: 1.
Average Burden Per Response: 5 hours, 47 minutes (Recordkeeping—5.50 hours; Learning about the form—.10 hours; Preparing form—.19 hours.
Estimated Annual Burden: 2,000,700 hours.

Social Security Administration

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: September 18, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95–23533 Filed 9–21–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: September 18, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on September 18, 1995:

DOT No: 4116

OMB No: 2115–New.
Administration: United States Coast Guard.
Title: Navigation Safety Equipment for Towing Vessels.
Need for Information: Under the Ports and Waterways Safety Act (Pub. L. 92–340), vessels that are 26 feet or more in length and engaged in towing services will be required to install and use specified navigation and communication equipment.
Proposed Use of Information: Coast Guard's inspectors will use this information to determine if a vessel is in compliance, or in the case of a casualty, whether failure to meet the regulations contributed to that casualty.
Frequency: Annually.
Respondents: Owners and Operators of Towing Vessels.
Number of Respondents: 5,203.
Burden Estimate: 336,102 hours.
Form(s): None.
Average Burden Hours Per Response: 64.6 hours.

DOT No: 4117

OMB No: 2115–0592.
Administration: United States Coast Guard.
Title: 46 CFR Subchapter L; Reporting, Recordkeeping and Marking.
Need for Information: Under 46 USC 3305 and 3306, the Coast Guard must prescribe necessary regulations and conduct inspections of offshore supply vessels to ensure the safety of individuals and property onboard.
Proposed Use of Information: The information will be used to ensure that vessels are in compliance with the prescribed regulations and the Coast Guard is aware when significant maintenance or repair work is done to offshore supply vessels.
Frequency: On occasion.
Burden Estimate: 2,051.25 hours.
Respondents: Owners or operators of offshore supply vessels.
Number of Respondents: 45.
Form(s): None.
Average Burden Hours Per Response: 15 minutes reporting and 1 hour recordkeeping.

DOT No: 4118

OMB No: 2115–0585.
Administration: United States Coast Guard.
Title: Marine Portable Tanks (MPT), Alteration Non-Specification Portable Tanks; Approval.
Need for Information: Title 46 CFR 64.9 specifies that each owner or manufacturer who wants to alter an existing MPT must request a written approval from the Commanding Officer, Coast Guard Marine Safety Center.
Proposed Use of Information: Coast Guard will use this information to ensure that alterations to the tank will retain the level of safety to which it was originally designed.
Frequency: On occasion.
Burden Estimate: 53 hours.
Respondents: Owners and manufacturers of marine portable tanks.
Number of Respondents: 1.
Form(s): None.
Average Burden Hours Per Response: 53 hours reporting.

DOT No: 4119.

OMB No: 2120–0067.
Administration: Federal Aviation Administration.
Title: Air Taxi and Commercial Operator Airport Activity Survey.
Need for Information: The information is needed to allocate Airport Improvement Program (AIP) funds to airports as required by 49 USC Section 40102(a)(2), 40104, 47101(a)(1), 47102(10), 47104(a), 47114(b), 47114(c)(1)(A) are the sections of 49 USC that authorize the collection.
Proposed Use of Information: The data collected serves as the only source

of data for charter and nonscheduled passenger data by Part 135 operator (both air taxis and commuters). The data received on the form is then incorporated into the Air Carrier Activity Information System which is used to determine whether an airports eligible for AIP funds and for calculating primary airport sponsor apportionments as specified by Title 49 USC.

Frequency: Annually.

Burden Estimate: 423 hours annually.

Respondents: Business and State and Local Governments.

Number of Respondents: 325.

Form(s): FAA Form 1800–31.

Average Burden Hours Per Response: 1.3 hours.

DOT No: 4120.

OMB No: 2117–0049.

Administration: Research and Special Programs Administration (RSPA).

Title: Recordkeeping Requirements for Gas Operators.

Need for Information: The gas pipeline safety regulations (49 CFR 192) require gas pipeline operators to maintain a series of test, inspection, and maintenance records so that compliance can be ascertained.

Proposed Use of Information: This information will be used by RSPA to ascertain from the information compliance with regulations since most of the operator's facilities are buried underground and are not readily accessible.

Frequency: On occasion.

Burden Estimate: 1,063,517 hours.

Respondents: Natural Gas Operators.

Number of Respondents: 54,700.

Form(s): None.

Average Burden Hours Per Response: 19.44 hours.

DOT No: 4121

OMB No: 2120–0569.

Administration: Federal Aviation Administration.

Title: Airport Grants Program.

Need for Information: The Airport and Airway Improvement Act (AAIA) of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223) prescribes policies and procedures for administration and management of the Airport Improvement Program (AIP).

Proposed Use of Information: This information through preapplications, applications and amendments is used to verify that a particular sponsor and airport is eligible for Federal assistance. Financial reports and requests for payment are used in the grant programs' fund control process, payment process, and accounting systems. The data is used by FAA Airports personnel and accountants to ensure that grant obligations are not exceeded and revenue is not diverted. Performance reports by FAA personnel to determine that project performance goals are being met.

Frequency: On occasion and quarterly.

Burden Estimate: 67,714 hours annually.

Respondents: Businesses, State, Local or Tribal Governments.

Number of Respondents: 1950.

Form(s): FAA Forms 5100–108, 5100–30, 5100–125, 5370–1.

Average Burden Hours Per Response: 28 hours.

Issued in Washington, D.C. on September 18, 1995.

Jim Harrell,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 95–23541 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–005]

Area To Be Avoided Off the Washington Coast

AGENCY: Coast Guard, DOT.

ACTION: Notice of results of public meeting and request for comments.

SUMMARY: The Coast Guard recently held a public meeting and requested written comments on whether the applicability of the Area To Be Avoided off the Washington Coast should be expanded to include vessels other than those carrying cargoes of oil or hazardous materials. The Area To Be Avoided, as adopted by the International Maritime Organization, recommends that all ships, including barges, carrying cargoes of oil or hazardous materials avoid the area. Based on the information received at the public hearing and in the written comments, the Coast Guard has determined that changes to the applicability of the Area To Be Avoided are not warranted at this time.

ADDRESSES: Written comments and the transcript of the public meeting are available for inspection or copying at Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593; Thirteenth Coast Guard District, 915 Second Avenue, Room 3410, Seattle, WA 98174; and at the Olympic Coast National Marine Sanctuary, 138 W. First Street, Port Angeles, WA 98362–2600 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Project Manager, Vessel Traffic Services Division, phone (202) 267–0415. This telephone is equipped to take messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1994, the Maritime Safety Committee of the International Maritime Organization (IMO) adopted the Area To Be Avoided off the Washington Coast (ATBA), recommending that all ships, including barges, carrying cargoes of oil or hazardous materials avoid the area. The ATBA, which was established to reduce the risk of marine casualty and resulting pollution and damage to the environment of the Olympic Coast National Marine Sanctuary, became effective on June 7, 1995. The boundaries of the ATBA do not overlay the Sanctuary boundaries, but are in close proximity.

On January 27, 1995, the Coast Guard published a request for comments and notice of meeting in the Federal Register (60 FR 5454) to obtain comment on whether the ATBA should apply to additional categories of vessels. Forty-two people attended the meeting, which was held on February 23, 1995, in Seattle, Washington. In response to comments, on March 6, 1995, the Coast Guard published a notice in the Federal Register (60 FR 12276) to extend the comment period until April 17, 1995.

The eighteen attendees who made oral statements at the meeting represented the Olympic Coast National Marine Sanctuary, Coalition of Washington Ocean Fishermen, Washington Public Ports Association, American Waterways Operators, Washington Environmental Council, Mayor of City of Hoquiam, Port of Grays Harbor, American Factory Trawler Association, Washington State Department of Ecology, Washington State Office of Marine Safety, Puget Sound Steamship Operators, Arctic Storm, Inc., Tyson Seafood Group, Jones Stevedoring Company, Makah Tribal Council, United Catcher Boats, Port of Seattle, and the Center for Marine Conservation. In addition to the oral statements, the Coast Guard received 48 written comments from individuals, the fishing industry, charter boat owners and operators, vessel associations, shipping agents, environmental organizations, ports officials, Chambers of Commerce, Congress of the United States, Washington State Legislature, and city, county, state, and Federal Government agencies. Six of the eighteen speakers also provided written

comments. Over 50% of the written comments were from people who derive a significant portion of their income from fish caught within the boundaries of the ATBA. Fifteen of the speakers at the meeting and 45 of the 48 written comments were opposed to any changes to the ATBA; 5 commenters requested change in the applicability of the ATBA.

Discussion of Comments

Comments Recommending Changes

Five commenters recommended that the categories of vessels to which the ATBA applies be expanded. One commenter noted that the ATBA applies to only 15 percent of vessels that currently navigate the area. One commenter recommended that all vessels and barges, in addition to those carrying oil or hazardous materials as cargo, avoid the area. Four commenters want all vessels over 500 gross tons to avoid the area, and two of these commenters would exempt fishing, military vessels, nature tour vessels, and tugs pulling barges carrying non-hazardous cargoes.

Four commenters were concerned with the consequences of a spill of large amounts of bunker fuel. They noted that the tank vessels and barges to which the ATBA currently applies are not the only vessels carrying large quantities of oil. They specifically mentioned freighters and bulk carriers which carry large quantities of bunker fuel. One commenter stated that 55 percent of the vessels, navigating in the area and greater than 80,000 dead weight tons, are bulk carriers. When inspected by the Washington State Office of Marine Safety, 59 percent of these vessels had deficiencies. These commenters believed that age and poor condition of these ships, and the history of oil spills and the environmental sensitivity of the area are ample reasons to expand the applicability of the ATBA to additional vessels.

Comments Recommending No Change

On behalf of the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management, the Olympic Coast National Marine Sanctuary Manager stated that the original ATBA proposal was aimed at providing enhanced protection from the greatest threat to Sanctuary resources, i.e., vessels carrying cargoes of oil or hazardous materials. NOAA also stated that the Sanctuary is not an exclusion area and that safe marine transportation and commercial fishing are two commercial uses compatible with sanctuary designation.

Commenters generally agreed that the ATBA as adopted should not be changed. These commenters were generally concerned that any changes would adversely impact trade competitiveness and jobs in struggling coastal Washington communities. They felt that expanding the applicability of the ATBA to additional categories of vessels would adversely affect current and future users of this area who depend on it for fishing, recreation, and maritime trade. They were also concerned about the safety of any additional vessels recommended to operate outside the ATBA boundaries which might increase the crossing or meeting situations and the probability of vessel collisions.

Economic Concerns: Commenters who wanted no change in the applicability of the ATBA discussed a variety of issues concerning the economic competitiveness of Washington ports. They stated that marine transportation is a crucial part of the state's economy and the ability to compete in the full range of shipping markets would be compromised by an expansion of the applicability of the ATBA. They were particularly concerned that Washington ports could lose their natural advantage in cargo movements to Asia, South America and other regions. Commenters also stated that changing the applicability of the ATBA would adversely affect the loggers. Due to the drop in log exports, only partial loads are being taken by vessels calling in a Columbia River port, Grays Harbor, and a Puget Sound port. Additionally, if the ATBA were not available for use by fishing vessels, it would adversely affect their ability to maintain family-wage jobs.

Safety Concerns: Commenters discussed the following factors as affecting safety of additional vessels operating outside the ATBA: (1) Sea state and weather changes outside the ATBA; (2) increased probability of vessel collisions immediately west of the ATBA boundary if vessels currently operating in the ATBA remain outside; (3) increased transit time caused by operating outside the ATBA could result in vessels operating at higher speeds to make up time lost; and, (4) interference between commercial vessel traffic and military operations.

Conclusion

The Coast Guard has carefully considered all the comments received and concludes that expanding the applicability of the ATBA to include vessels and barges other than those carrying cargoes of oil or hazardous materials is not justified at this time.

Dated: September 15, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterway Services.

[FR Doc. 95–23520 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–067]

Reorganization of the Office of Marine Safety, Security and Environmental Protection

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is announcing the comprehensive reorganization of the Office of Marine Safety, Security and Environmental Protection (G–M). Though all existing functions will continue to be performed, the office is being extensively reorganized, with no direct comparability between the new organizational units and the old ones. This notice describes the new organizational structure, lists interim telephone numbers, and announces the establishment of a customer help line to assist the public in locating the correct division, branch or project officer.

FOR FURTHER INFORMATION CONTACT: 1. To locate the correct division, branch, or project manager, call (703) 560–4787 between 8:30 a.m. and 5:30 p.m., Monday through Friday.

2. For further information on the reorganization, call CDR Theron ''Pat'' Patrick or MSTCM Bruce Peters at (703) 235–1819 between 8 a.m. and 3 p.m., Monday through Friday, or write to the MTRANS Reorganization Staff, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Room B723, Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

Description of the New Directorates

The Office of Marine Safety, Security and Environmental Protection (G–M), a Headquarters staff element, is being reorganized into four major divisions or directorates. The Standards, Field Activities, and Resources Directorates are located at Coast Guard Headquarters. The National Maritime Center (NMC) is located in Arlington, VA. Each directorate is headed by a senior civilian (SES/GM–15) or military officer (06) who serves as an associate program director under the Chief of G–M, an Admiral.

Most of the necessary physical relocation will be accomplished during August and September 1995. The new organizational symbols and titles have been in use since August 1, 1995.

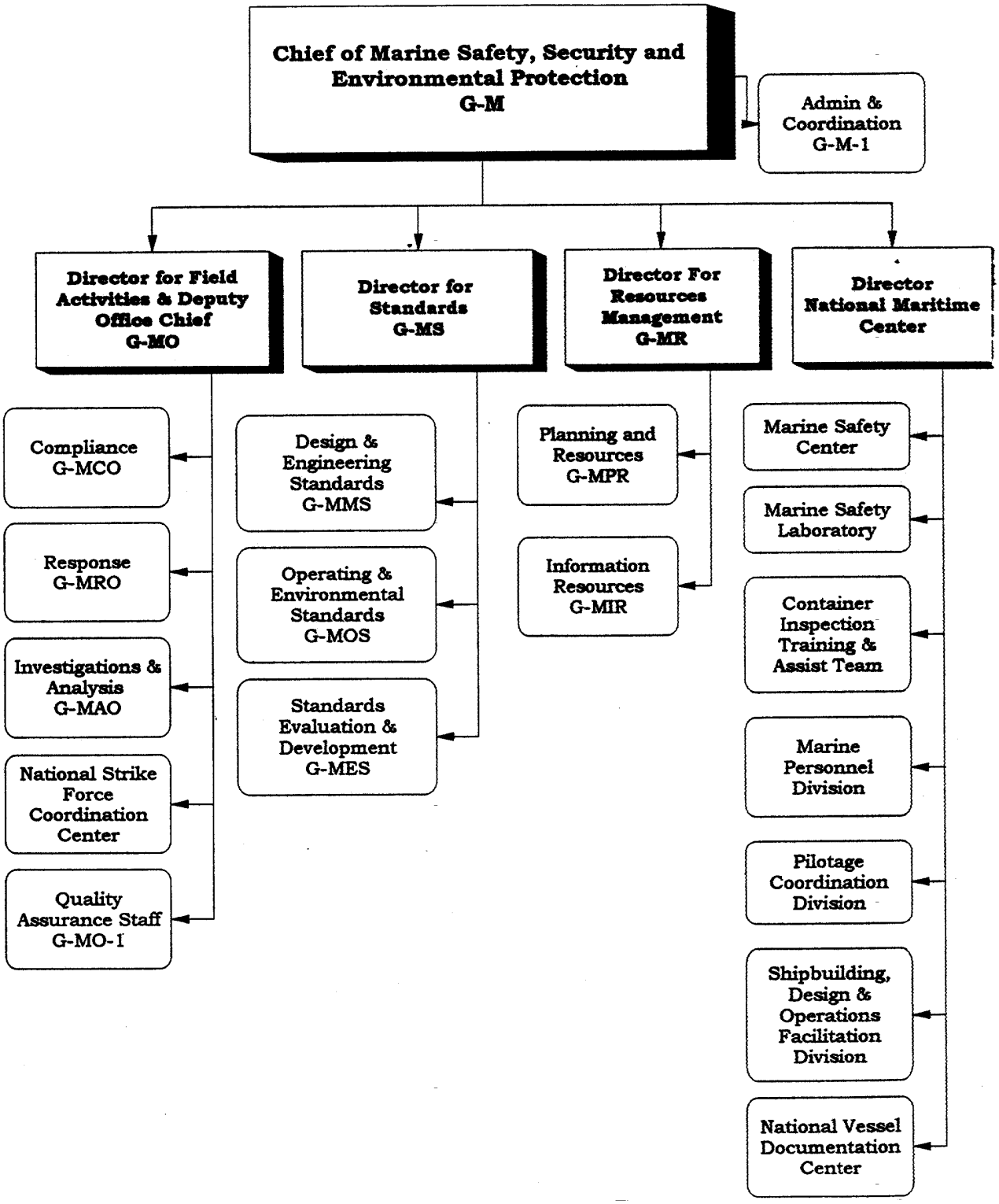
The purpose of the reorganization is to improve services to distinct customer groups and to be more effective and responsive to customer's needs. It will enhance the expertise and effectiveness of the G–M staff. Most importantly, it will better enable the Office to meet the challenges of the new century, yet reduce costs, by applying a complete system approach to safety, service, and environmental protection.

Organization Chart

The following is a chart showing the titles and symbols of the new units:

BILLING CODE 4910–14–P

Office of Marine Safety, Security and Environmental Protection



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Functions of the Directorates

1. *Field Activities.* This directorate focuses on Coast Guard field commands, third parties acting on the Coast Guard's behalf, and their associated customers. It provides a focal point for policy guidance on field activities concerning prevention, response, investigation, and quality assurance. The Director for Field Activities also serves as the deputy chief of G–M.

2. *Standards.* This directorate works with industry and the public to develop design, engineering, operating, and environmental standards applicable to the marine community. The primary goals of this directorate are to lead the way in resolving maritime problems and to create solutions that emphasize safety and environmental protection. This directorate will take the lead in addressing the human element as the cause of more than 80% of all marine casualties.

3. *Resource Management.* This directorate focuses on internal Coast Guard matters (including other directorates, the NMC, and other Headquarters offices). It provides planning, budgeting, training, resource and information management, and program analysis to support marine safety and environmental protection missions. The directorate's primary goal is to provide the resources and services needed by the Standards and Field Activities directorates.

4. *National Maritime Center (NMC).* The NMC provides direct services to the public, including plan review and technical assistance for vessels, documentation of vessels, identification of oil, licensing of marine personnel, and management of seamen's records. The NMC will better enable the Coast Guard and industry, working together, to resolve problems and improve U.S. maritime competitiveness. The address of the NMC is Director, National Maritime Center, 4200 Wilson Boulevard, Suite 510, Arlington, VA 22203. Certain units are located in other States as indicated in the Interim Telephone Numbers section of this Notice.

INTERIM TELEPHONE NUMBERS

Title	Staff Symbol	Interim Phone No.
Chief, Office of Marine Safety, Security and Environmental Protection	(G–M)	(202) 267–2200
Director For Field Activities & Deputy Office Chief	(G–MO)	(202) 267–2201
Quality Assurance Staff	(G–MO–1)	(202) 267–1080
Compliance Division	(G–MCO)	(202) 267–2978
Licensing and Manning Branch	(G–MCO–1)	(202) 267–0475
Vessel Compliance Branch	(G–MCO–2)	(202) 267–1464
Port and Facility Compliance Branch	(G–MCO–3)	(202) 267–0495
Response Division	(G–MRO)	(202) 267–0518
Port and Environ. Mgmt. Branch	(G–MRO–1)	(202) 267–0419
Plans and Preparedness Branch	(G–MRO–2)	(202) 267–6714
Response Operations Branch	(G–MRO–3)	(202) 267–2611
Investigations and Analysis Division	(G–MAO)	(202) 267–1430
Investigations Branch	(G–MAO–1)	(202) 267–1430
Compliance Analysis Branch	(G–MAO–2)	(202) 267–1417
Director for Standards	(G–MS)	(202) 267–2970
Design & Engineering Standards Div	(G–MMS)	(202) 267–2967
Human Element & Systems Engineering	(G–MMS–1)	(202) 267–2997
Naval Architecture Branch	(G–MMS–2)	(202) 267–2988
Engineering Systems Branch	(G–MMS–3)	(202) 267–2206
Lifesaving & Fire Safety Stds. Branch	(G–MMS–4)	(202) 267–1076
Operating & Environmental Stds. Div	(G–MOS)	(202) 267–0215
Maritime Personnel Qualifications Br	(G–MOS–1)	(202) 267–0229
Vessel & Facility Operating Stds. Br	(G–MOS–2)	(202) 267–1181
Hazardous Materials Stds. Branch	(G–MOS–3)	(202) 267–1217
Environmental Stds. Branch	(G–MOS–4)	(202) 267–0707
Standards Evaluation & Development Div	(G–MES)	(202) 267–6826
Standards Evaluation & Analysis Br	(G–MES–1)	(202) 267–6827
Project Development Branch	(G–MES–2)	(202) 267–1492
Director For Resources Management	(G–MR)	(202) 267–6955
Planning and Resources Division	(G–MPR)	(202) 267–1401
Strategic Plans & Analysis Branch	(G–MPR–1)	(202) 267–1401
Budget & Resources Branch	(G–MPR–2)	(202) 267–1401
Human Resources Branch	(G–MPR–3)	(202) 267–1401
Information Resources Division	(G–MIR)	(202) 267–6993
Data Admin. Branch	(G–MIR–1)	(202) 267–0266
System Support Branch	(G–MIR–2)	(202) 267–0452
System Development Branch	(G–MIR–3)	(202) 267–0452
Director, National Maritime Center	(NMC)	(703) 235–0002
Shipbuilding, Design, and Operations Facilitation Staff	(NMC–1)	(703) 235–0013
Container Inspection Training & Assist Team (Oklahoma City, OK)	(NMC–1A)	(405) 954–8985
Pilotage Coordination Division	(NMC–2)	(703) 235–0014
Budget, Admin. & Planning Division	(NMC–3)	(703) 235–1561
Marine Personnel Division	(NMC–4)	(703) 235–0011
Marine Personnel Admin. Branch	(NMC–4A)	(703) 235–1951
Exam Administration Branch	(NMC–4B)	(703) 235–1300
Marine Safety Center	(MSC)	(202) 366–6480
National Vessel Documentation Center (Martinsburg, WV)	(NVDC)	(304) 271–2400/2405
Marine Safety Laboratory (Groton, CT)	(MSL)	(203) 441–2645

Dated: August 31, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–23516 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–14–P

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Riverside Municipal Airport, Riverside, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the city of Riverside, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Noise Exposure Maps for Riverside Municipal Airport, Riverside, California is September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at the same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Riverside Municipal Airport, Riverside, California are in compliance with applicable requirements of Federal Aviation Regulations (FAR) Part 150, effective September 12, 1995.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the city of Riverside. The specific maps under consideration are Exhibit 2G, ''1994 Aircraft Noise Exposure'' and Exhibit 2H ''1999 Aircraft Noise Exposure'' in the submission. The FAA has determined that these maps for Riverside Municipal Airport are in compliance with applicable requirements. This determination is effective on September 12, 1995. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutory required consultation has been accomplished.

Copies of the Noise Exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261

Mr. John Sabatello, Airport Director, Riverside Municipal Airport, 6951 Flight Road, Riverside, California 92504.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on September 12, 1995.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600 Western-Pacific Region.

[FR Doc. 95–23565 Filed 9–21–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 185 meeting to be held October 10-11, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Welcome and Administrative Remarks; (2) Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review of Results of Working Group 1 Editorial Group Meeting; (6) Presentations; (7) Assignment of Tasks; (8) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 18, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–23564 Filed 9–21–95; 8:45 am]

BILLING CODE 4810–13–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of priority areas for Commission research and amendment study. Request for public comment.

SUMMARY: As part of its statutory continuing responsibility to analyze sentencing issues, including the operation of the federal sentencing guidelines, the Commission has identified certain priorities as the principal focus of its work in the coming year and, in some cases, beyond. Following the practice of past years, the Commission invites comment on identified priorities (including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to an identified priority). The Commission also invites comment on any other aspect of guideline application that it should address during the coming year.

DATES: Public comment should be received not later than October 31, 1995, to be considered by the Commission in shaping its work during the next year.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500 South, Washington, D.C. 20002–8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the United States Government, is empowered by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. § 994(o), (p).

As in previous years, the Commission uses this announcement to solicit formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches.

Following are the priority areas for amendment study, research, or other planned actions identified by the Commission. Where possible, a general timeframe for the initiative is indicated. These timeframes should be considered subject to change as the Commission deems necessary.

- Measuring the Success of the Guidelines: A staff working group, under the direction of an outside consultant, has undertaken a number of projects that will measure the success of the guidelines in meeting the goals set forth in the Sentencing Reform Act. Projects related to just punishment, recidivism, and selective incapacitation are well underway. Other projects will examine offense seriousness, real-offense sentencing, judicial discretion, criminal history, alternatives to incarceration, and disparity.

- Guideline Simplification and Modification: A staff working group, under the direction of an outside consultant, will focus on simplifying and improving the guidelines. This effort will be informed substantially by the work, discussed above, measuring the success of the guidelines. In accordance with 28 U.S.C. § 994 (o), (p), and (x), the Commission intends that this process will involve consultation with a wide variety of interested groups and individuals. The Commission has prepared the following purpose statement for this working group:

Working Group on Guideline Simplification: Purpose Statement

I. Introduction

The Sentencing Commission, at its May meeting, identified comprehensive review of the federal guidelines system as a top agency priority. The Commission is well positioned to undertake this task, given the vast amounts of information available from the more than 225,000 cases sentenced under the guidelines during the past eight years, numerous appellate opinions issued on various guidelines issues, the growing body of academic literature and public comment, and the extensive empirical analysis of the guidelines conducted to date.

This purpose statement outlines the working group's proposed scope of inquiry and methodology.

II. Working Group Mandate

The objective of the working group's comprehensive review of the guidelines is twofold: 1) to reduce the complexity of guideline application (''simplification''); and 2) to improve federal sentencing by working closely with the judiciary and others to refine the guidelines (revisiting the balance of judicial flexibility/discretion and the availability of alternative punishments). The group will comprehensively and aggressively assess each major section of the guidelines, critique application complexities, and develop options for Commission consideration. Complexity is viewed as the source of confusion and frustration in guideline application. Moreover, this confusion results in unreliable application and judicial resistance—two outcomes that undermine the effectiveness of the guidelines.

Guideline complexity derives, in part, from fundamental decisions made by the original Commission in its effort to meet the Sentencing Reform Act's twin goals of: 1) assuring that the purposes of sentencing are met (i.e., just punishment, deterrence, incapacitation, and rehabilitation); and 2) providing certainty and fairness in meeting the purposes of sentencing while avoiding unwarranted disparities between similarly situated defendants (see 28 U.S.C. § 991(b)(1)). To ensure that the ramifications of all options for change are clear, the group will highlight the broader policy implications of its proposals (e.g., its effect on proportionality or a judge's ability to individualize sentences).

III. Methodology

The working group proposes the following strategy to assist commissioners in their deliberations on how they might simplify and improve the guidelines system. The group will prepare *concise* issue papers on major guideline topics to provide a foundation for Commission consideration of relevant issues and possible sentencing models. Each paper will:

- Review the history behind the original policy decision so as to ensure that the Commission is sensitive to the underlying principles and the impact of any revisions on these principles;
- Assess how the particular guideline is working (e.g., application complexities; frequency of use identified through monitoring data);
- Summarize information needs that might reasonably assist the

Commission's decision making on the topic; and

• Outline broad options for refinement.

These papers will provide sound bases for commissioners, staff, and the public to understand the current guidelines and assess any proposals for change.

The group is currently drafting issue papers on the following topics:

1. Sentencing Reform Act (and subsequent sentencing legislation)
2. Drafting process used by initial Commission; major changes since that time
3. Real offense sentencing (Relevant Conduct)
4. Criminal history
5. Level of detail (specific offense characteristics)
6. Chapter Three adjustments
7. Departures/offender characteristics
8. Sentencing table/sentencing ranges
9. Availability of probation/split sentences (alternatives)
10. Multiple counts

This methodology will enable staff to provide the Commission the full range of options for reviewing and revising the guidelines. In its review, the working group will examine how state guideline systems have addressed issues that judges and practitioners have found particularly complex in the federal system. In addition, the group will consult closely with judges and practitioners and solicit a wide variety of public comment from the Criminal Law Committee of the Judicial Conference, Practitioners' and Probation Officers' Advisory Groups, Department of Justice, Federal and Community Defenders, and others. Finally, the working group will analyze all responsible suggestions for guideline reform from outside individuals and groups.

The simplification process should be developmental and done with caution because significant changes may result in unforeseen anomalies. Therefore, it is important that as the simplification working group develops proposals it ensures that the proposals: 1) be consistent with the Sentencing Reform Act; 2) be sensitive to case law; and 3) be aware of the underlying premises that the previous Commission used in developing the guidelines. This caution will ensure that the guidelines are an evolving set of standards that change as information and experience buttresses the need for change.

• Evaluation of Commission Staff Resources: The Commission has begun a program to measure the use of staff resources as presently allocated and to explore changes to the current staff resource allocation. This review is examining present procedures and processes to improve efficiency and determine strengths and weaknesses in various Commission functional components.

• Organizational Guidelines for Environmental Offenses: Development of fine guidelines for organizational defendants convicted of environmental offenses remains under consideration; however, the Commission expects that the guideline assessment and simplification efforts set forth above will receive priority attention.

• Substantial Assistance Working Group: This ongoing working group has recently completed the data collection portion of its study effort. The group is expecting to issue a report this fall.

• Implementation of Crime-related Legislation: The Congress is now considering legislation concerning terrorism, firearms, and other crime-related issues. The Commission will move promptly to implement any enacted legislation affecting criminal penalties through the promulgation of necessary guideline amendments or other actions as appropriate.

• Miscellaneous Issues: The Commission expects to propose for comment amendments to the food and drug guidelines. Amendments addressing some of the more important guideline application issues involving conflicting court interpretations also may be considered.

The Commission welcomes comments on the aforementioned priorities as well as any other aspect of guideline application or implementation of the Sentencing Reform Act.

Authority: 28 U.S.C. § 994 (a), (o), (p).

Richard P. Conaboy,

Chairman.

[FR Doc. 95–23552 Filed 9–21–95; 8:45 am]

BILLING CODE 2210–40–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee for Trade; Notice of Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The September 14, 1995 meeting of the Defense Policy Advisory Committee for Trade was closed to the public.

SUMMARY: The meeting included a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I determined that the meeting concerned matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to any trade agreement the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting was held on September 14, 1995.

ADDRESSES: The meeting was held at the Pentagon, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the United States Trade Representative, Executive Office of the President (202) 395–6120.

Michael Kantor,

Office of the United States Trade Representative.

[FR Doc. 95–23546 Filed 9–21–95; 8:45 am]

BILLING CODE 3190–01–M

Third Country-by-Country Reallocation of the Tariff-rate Quota for Sugar

AGENCY: Office of the United States Representative, 600 17th Street, NW., Washington, DC 20508.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of a country-by-country reallocation of part of the in-quota quantity of the tariff-rate quota for imported sugar for the period that ends September 30, 1995.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: On September 14, 1995, the United States Trade Representative determined and announced that countries to which an allocation had been made of the in-quota quantity under the sugar tariff-rate quota (TRQ) provided for in Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) would not be filing their allocations and that the amount of this shortfall would be reallocated to other supplying countries or areas. This

notice documents this earlier announcement. Following is information on the quota shortfall and reallocation amounts for the September 14 announcement.

September 14, 1995, Reallocation

On September 14, 1995, the United States Trade Representative determined and announced that five countries would not be filling their allocations under the tariff-rate quota for sugar. Accordingly, their remaining quota balances are being reallocated. These countries (and the respective shortfall amounts being reallocated in MT, raw value) are: Bolivia 1,300 MT, Haiti 21,840 MT, the Philippines 15,400 MT, Mauritius 900 MT, and Trinidad-Tobago 85 MT. The amount of the total shortfall is 39,525 metric tons (43,569 short tons).

This amount has been reallocated among the following supplying countries in metric tons, raw value:

Country	Reallocated amount
Argentina	5,548
Australia	10,708
Brazil	7,000
Colombia	3,097
Fiji	1,162
Nicaragua	500
Panama	1,000
Peru	5,291
South Africa	2,967
Swaziland	705
Zimbabwe	1,547
Total	30,525

Note: The reallocation amount is zero for the ten minimum quota-holding countries including: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papau New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay, since the previously announced minimum allocation for these countries already exceeds the base import quota plus any reallocation adjustment.

This reallocation applies to the period ending September 30, 1995, only.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–23545 Filed 9–21–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 184
Friday, September 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [insert FR citation].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 21, 1995.

CHANGES IN MEETING: Meeting concerning Acetone Petition HP 95–2 was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 20, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23746 Filed 9–20–95; 3:20 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 28, 1995 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bicycle Helmets

The staff will brief the Commission on a revised proposed safety standard for bicycle helmets, which the staff recommends based on technical assessments of comments received on the notice of proposed rulemaking (NPR) published in the Federal Register on August 15, 1994.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 20, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23747 Filed 9–20–95; 3:20 am]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 27, 1995, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 20, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23748 Filed 9–20–95; 3:20 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, September 19, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Texas American Bank/Fort Worth, National Association, Fort Worth, Texas (Case No. 450–05993–95–BOD)

Matters relating to the Corporation's corporate and supervisory activities.

Application of Shoreline Bank, Benton Harbor, Michigan, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Edwardsburg Branch of Old Kent Bank, Grand Rapids, Michigan.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chariman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: September 19, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–23735 Filed 9–20–95; 2:27 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 26, 1995, 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/or by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendment to an Existing System of Records—Financial Institutions Investigative and Enforcement Records System.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's

rules and regulations, entitled ''Assessments,'' which (1) delay the collection date for the first quarterly assessment payment that insured institutions must make for the first semiannual period of each year (first payment); (2) give insured institutions the option of prepaying the first quarterly payment during the prior December; and (3) replace the interest rate to be applied to underpayments and overpayments of assessments with a new rate.

Memorandum and resolution re: Proposed amendments to Part 339 of the Corporation's rules and regulations, entitled ''Loans in Areas Having Special Flood Hazards,'' regarding lending requirements in areas having special flood hazards.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 19, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–23736 Filed 9–20–95; 2:27 pm]

BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 1:00 p.m., Thursday, September 28, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Approval of NCUA's Serving the Underserved Conference.
3. Proposed Rule: Amendments to Part 760, NCUA's Rules and Regulations, Flood Insurance.
4. Final Rule: Amendments to Section 701.21(c)(8), NCUA's Rules and Regulations, Prohibited Fees.
5. Final Rule: Amendments to Part 722, NCUA's Rules and Regulations, Appraisals.
6. Proposed Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, Chartering and Field of Membership.

RECESS: 2:20 p.m.

TIME AND DATE: 2:30 p.m., Thursday, September 28, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Request from a Corporate Federal Credit Union for a Waiver from Section 704.6, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Actions under Section 205 of the FCU Act. Closed pursuant to exemptions (8) and (9)(B).
4. Request from a Federal Credit Union for a Community Charter Expansion. Closed pursuant to exemption (8).
5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Personnel Actions. Closed pursuant to exemptions (2), (6), (8), and (10).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–23754 Filed 9–20–95; 8:45 am]

BILLING CODE 7535–01–M

Federal Register

Friday
September 22, 1995

Part II

Department of Transportation

Federal Highway Administration

49 CFR Part 382

Controlled Substances and Alcohol Use and Testing; Foreign-Based Motor Carriers and Drivers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC–93–3]

RIN 2125–AD11

Controlled Substances and Alcohol Use and Testing; Foreign-Based Motor Carriers and Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is extending the applicability of rules on controlled substances and alcohol use and testing to include foreign-based drivers of motor carriers operating in the United States. This action is taken pursuant to the Omnibus Transportation Employee Testing Act of 1991 and is consistent with the international obligations of the United States. The rules will apply to all foreign-based drivers and employers, who are predominantly from Canada and Mexico, to the same extent as those based in the United States.

EFFECTIVE DATE: This rule is effective October 23, 1995.

FOR FURTHER INFORMATION CONTACT: For information regarding FHWA alcohol and controlled substances testing requirements regarding 49 CFR part 382: Office of Motor Carrier Research and Standards, (202) 366–1790. For information regarding alcohol and controlled substances testing legal issues: Office of the Chief Counsel—Motor Carrier Law Division, (202) 366–0834. For requests for presentations on implementation of the alcohol and controlled substance testing requirements in foreign countries: International Program (HPS–1), (202) 366–5370, Office of Motor Carrier Planning and Customer Liaison, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except United States Federal holidays.

For information regarding Department of Transportation (DOT) procedural issues and testing protocols in 49 CFR part 40: Director (S–1), (202) 366–3784, Office of Drug Enforcement and Program Compliance, Room 10317, Office of the Secretary of Transportation, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Office hours are from 9:00 a.m. to 5:30 p.m., e.t., Monday through Friday, except United States Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1988, the FHWA, along with certain other agencies within the Department of Transportation (the Department), adopted regulations requiring pre-employment, periodic, post-accident, reasonable cause and random controlled substances testing of safety sensitive employees, including commercial motor vehicle (CMV) drivers. The FHWA rule applied to certain CMV drivers while operating in the United States, regardless of whether they were based in a foreign country or the United States. The rule provided generally, however, that it would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rule as originally published further provided that it would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rules raises questions of compatibility with that country's laws or policies. *See* 53 FR 47134, codified at 49 CFR 391.81 *et seq.*

The FHWA subsequently amended its regulation to delay the effective date of controlled substances testing requirements for foreign-based drivers of foreign-based motor carriers on four occasions. *See* 54 FR 39546, September 27, 1989; 54 FR 53294, December 27, 1989; 56 FR 18994, April 24, 1991; 57 FR 31277, July 14, 1992. The primary reason for each delay was because the DOT thought it would be more effective to address the problem through bilateral or multilateral agreements and wanted to continue exploring the possibility of such an agreement. Prior to implementation of the North American Free Trade Agreement (NAFTA) on December 17, 1995, the only foreign-based motor carriers operating throughout the United States in significant numbers will be Canadians, with Mexicans confined to operating in limited commercial zones.

Meanwhile, on October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) was enacted. 49 U.S.C. 31306. The Omnibus Act requires the Secretary of Transportation to issue regulations requiring controlled substances and alcohol testing of CMV drivers who are subject to the commercial driver's licensing (CDL) requirements of the Commercial Motor Vehicle Safety Act of 1986. 49 U.S.C. Chapter 313. The final rule implementing such testing was published on February 15, 1994. *See* 59 FR 7302, codified at 49 CFR part 382. The 1994 rule replaced the current controlled substances testing rule in 49 CFR part 391, and instituted alcohol testing. With part 391 to be completely superseded by part 382 on January 1, 1996, the most recent compliance date in part 391 for foreign-based motor carriers was removed. *See* 60 FR 54, January 3, 1995.

The Omnibus Act applies to motor carriers and drivers operating in the United States, which includes foreign employers and drivers. The only express provision for foreign-based operations is that the new rule be ''consistent with international obligations of the United States, and * * * shall consider applicable laws and regulations of foreign countries.'' 49 U.S.C. 31306(h). Thus, foreign-based drivers are required by the statute to be subject to testing to the extent such rules are consistent with United States international obligations, and the Secretary is granted the authority to deem the requirement satisfied by, and must take into consideration, the laws and regulations of foreign nations.

As part of its consideration of foreign laws, the FHWA solicited information from interested parties regarding the applicability of part 382 to foreign-based drivers. 57 FR 59536 (December 15, 1992) (advance notice of proposed rulemaking); 59 FR 7528 (February 15, 1994) (notice of proposed rulemaking). In the notice of proposed rulemaking (NPRM), the FHWA proposed to apply part 382 to foreign-based operations beginning on January 1, 1996, while continuing to explore the possibility of entering into agreements to recognize other nations' testing programs for purposes of compliance with part 382. In today's document, based upon comments received and the FHWA's intent to provide regulatory flexibility for foreign employers, the FHWA is adopting July 1, 1996, as the effective date for large foreign employers and drivers to comply with these regulations and July 1, 1997, as the effective date for small foreign employers and drivers to comply with these regulations. The FHWA has reconsidered the period when implementation of the rule is necessary and believes now that providing a two-tier implementation phase-in period for this rulemaking is consistent with the implementation phase-in periods provided to domestic employers in 1994. The FHWA believes that this is necessary to provide consistency and fairness to foreign employers.

On December 19, 1994, in a letter to United States Secretary of Transportation Federico Peña, Canadian Transport Minister Douglas Young indicated that the Canadian government

would not be introducing legislation on prevention of substance use in transportation at this time. Minister Young further stated that Canada's motor carrier industry should be allowed to develop a voluntary program ''tailored to their particular needs.''

II. Comments

There were twelve comments to the docket for the NPRM of February 15, 1994. Two of the twelve comments did not address the foreign-based testing issue. All references to a foreign nation in the other comments were to Canada or Mexico, with specific information provided about Canada but not about Mexico. No other nations were mentioned in the comments as a base from which drivers or motor carriers operate in the United States. The FHWA is aware of rare, limited instances of drivers from other nations operating in the United States.

Seven relevant comments were received prior to Transport Minister Young's letter to Secretary Peña, from the American Bus Association (ABA), the Owner-Operator Independent Drivers Association (OOIDA), the American Trucking Associations, Inc. (ATA), the Embassy of Canada, the Canadian Bus Association (CBA), the Ontario Motor Coach Association (OMCA), and the Canadian Trucking Association (CTA). Three comments were received from one organization, the Canadian Coalition of Motor Carriers on Substance Use (CCMCSU), after Transport Minister Young's letter. The CCMCSU is a coalition of the CBA, the CTA, the Private Motor Truck Council of Canada, and the COM–CAR Owner-Operators' Association, and represents about 2,000 Canadian motor carriers. There are approximately 8,450 Canadian motor carriers listed on the FHWA's Motor Carrier Management Information System census database that operate in the United States.

A. Applicability

The ABA and the ATA strongly support applying the alcohol and controlled substances testing regulations to foreign-based drivers and motor carriers operating in the United States. The OOIDA stated that although it has never supported alcohol and controlled substances testing without cause, because testing is required of United States-based employers and drivers, ''the Association reluctantly takes the position that the scope of the controlled substance and alcohol testing regulations should be expanded to include drivers of foreign-based motor carriers.''

The comments of the CBA, CTA, and OMCA all supported the Embassy of Canada's comment favoring continuation of reciprocity discussions and negotiations in the interest of efficiency, cost, and comity. Once it became clear that Canada would not have reciprocal standards, at least for testing requirements, the CCMCSU commented that it was prepared to begin assisting implementation of the FHWA alcohol and controlled substances testing regulations in Canada.

FHWA Response: The statutory directive is clear. All drivers operating in the United States are to be subject to controlled substances and alcohol testing, regardless of domicile. The safety concerns which led to the Omnibus Act pertain equally to United States and foreign-based drivers. Furthermore, it would be unfair and competitively harmful to United States' drivers and employers to require them to incur significant costs not borne by foreign-based operations. This is particularly true in light of provisions in NAFTA designed to open United States motor carrier markets to operators based in Mexico, and vice versa, beginning in December 1995.

From their inception in 1988, part 391 controlled substances testing requirements applied to foreign-based carriers. Though Canadians continued to operate throughout the United States, foreign implementation was delayed several times while legal and other issues were discussed bilaterally with Canada. Foreign application of part 382 has, in effect, been delayed for the same reason. Now that it is clear that Canada will not establish, and further discussion will not result in, comprehensive national standards comparable to part 382, there is no reason to delay further, and, indeed, every reason to advance, this important safety rule. The imminence of Mexican operations in the United States reinforces this need.

Applicability of part 382 will therefore be extended to that class of drivers currently expressly excluded—foreign-based drivers of foreign-based motor carrier employers while operating in the United States. The rule as written can be administered wholly in the United States, though perhaps not most efficiently (see discussion below on Testing Procedures). Most parts of the rule can also be administered in Canada or Mexico, though some parts of the rule will have to be administered in the United States, such as use of U.S. Department of Health and Human Services (DHHS) certified laboratories, all of which are in the United States. In any event, unless otherwise provided by the FHWA at a later date based on recognition of comparable foreign standards, the rule will apply to foreign-based drivers of foreign-based employers to exactly the same extent and in exactly the same manner as to domestic operators.

Nevertheless, the FHWA remains very interested in continuing to explore bilateral agreements that would have the effect, subject to the FHWA's rulemaking and waiver authority in this area, of recognizing all or part of any Canadian program and Mexican standards as comparable to part 382, ''consistent with the international obligations of the United States, and * * * [taking] into consideration any applicable laws and regulations of foreign countries.'' Two examples of comprehensive reciprocity agreements with Canada and Mexico are the Memoranda of Understanding that recognize their commercial driver's license (CDL) systems as equivalent to the United States requirements. See 54 FR 22392 (May 23, 1989); 57 FR 31454 (July 16, 1992).

B. Implementation Dates

The FHWA proposed in the NPRM that all foreign employers be required to comply with part 382 requirements beginning on January 1, 1996, one year after large United States carriers, and the same day as smaller United States carriers. The ABA commented that the date should be January 1, 1995, arguing that there was no justification for permitting discrimination against domestic motor carriers by granting an additional year to large foreign employers. The ATA hoped that further extension of the deadline would be unnecessary, but recognized ''the complexities of imposing (the testing) requirements on foreign-based motor carriers and drivers, and that the details remain to be worked out as an integral part of harmonization of medical standards.'' The CCMCSU requested that FHWA impose testing requirements one year from the date of the final rule, in order to provide adequate time to develop and implement effective programs and overcome the perceived level of confusion of its members about implementing testing programs.

FHWA Response: The FHWA is most concerned with the effective implementation of this program and has always provided reasonable implementation schedules to domestic motor carriers to implement the complex requirements of controlled substances and alcohol testing. Given the changing nature and source of the DOT testing programs since 1988 and

the numerous delays, the FHWA believes it would be unreasonable to expect a foreign-based employer to have sufficient understanding to begin implementation immediately.

The FHWA believes the best course is to allow foreign-based employers a similar implementation schedule as was provided to domestic employers. Large domestic employers were provided approximately one year to implement a testing program, while small employers were provided two years. The purpose was to give employers with different capabilities and resources sufficient time to implement technically sound testing programs.

Therefore, the FHWA has decided that large foreign-based employers will be required to implement part 382 on July 1, 1996, and small foreign-based employers will be required to implement part 382 on July 1, 1997. Foreign employers may not implement part 382 testing requirements until the dates specified.

Consistent with implementation by domestic employers, the factor which determines whether a foreign-based employer is considered large or small is the number of drivers of CMVs it employs or uses in North American operations on a certain date. That date will be December 17, 1995, which correlates with the NAFTA implementation date for allowing Mexican drivers to operate in California, Arizona, New Mexico, and Texas. Thus, all drivers assigned by the foreign-based employer to operate in North America on December 17, 1995, are to be included in the count of drivers.

C. Testing Procedures

Various comments from Canadian entities have requested that laboratories certified in Canada be acceptable for analysis of urine specimens for controlled substance testing. The CCMCSU also has asked whether foreign collection sites, medical review officers (MRO), substance abuse professionals (SAP), breath alcohol technicians (BAT), and other personnel involved in the testing process will be allowed to provide services in Canada, or may only United States-based providers provide such services.

FHWA Response: With respect to testing for controlled substances, the Omnibus Act requires that the Secretary incorporate the scientific and technical guidelines established by DHHS, including forensic standards for laboratory procedures and certification. The DOT has fulfilled this directive by requiring that all DOT-mandated testing be conducted only by DHHS-certified laboratories, all of which are currently in the United States.

The DOT recognizes the interest that Canadians have in using Canadian laboratories. Yet, it is critical that the integrity of the testing process be protected, which is why DHHS certification is required for testing in the United States. The DOT will work with the DHHS, Canada, and Mexico in determining whether foreign laboratory procedures may be DHHS certified or are forensically comparable such that reciprocity is possible.

As to the other elements mentioned, there is no requirement that urine collection personnel, MROs, SAPs, or BATs be licensed, certified, or trained in the United States. However, MROs and SAPs must be appropriately licensed or certified by the jurisdiction in which they perform such functions. The definition of an SAP may include professional categories irrelevant in Canada and Mexico, particularly certification by the National Association of Alcohol and Drug Abuse Counselors; however, the DOT is willing to discuss reciprocity with regard to national counterparts.

D. Enforcement

The ATA and the CCMCSU provided comments regarding the enforcement of the alcohol and controlled substances testing regulations on foreign-based motor carriers and drivers. The ATA suggests that foreign-based drivers be required to join a United States-based consortium within 30 days of their initial entry into the United States, pass both alcohol and controlled substance tests, and be issued tamper-resistant photo identification cards documenting compliance that must be presented to United States border officials as a condition of entry into the United States. The CCMCSU notes that it will work with FHWA to facilitate and educate Canadian motor carriers about compliance with these new rules, and suggests that the FHWA coordinate with Transport Canada officials to address program enforcement issues.

FHWA Response: Enforcement of controlled substances and alcohol testing requirements must be seen in the context of the entire motor carrier safety program. The United States and Canada have had a long-term, ongoing, and successful relationship enforcing motor carrier safety regulations. The distinguishing factor in the testing area is the absence of regulatory standards from Transport Canada. The FHWA will work with Transport Canada and the Canadian provincial governments to develop enforcement systems, using existing systems to the extent possible, but also considering some form of certification of compliance and other innovative methods.

The situation with Mexico is altogether different. Since Mexicans will only begin operating in the United States in December 1995, the enforcement systems in place on the northern border may be lacking on the southern. Controlled substances and alcohol testing enforcement will be a part of any systems established. Reciprocity and innovative methods will be considered.

III. Final Rule

The applicability section of the controlled substances and alcohol testing rule is being amended to include coverage of foreign-based drivers of foreign-based carriers. To accomplish this, § 382.103(c)(4), which excludes foreign-based carriers, is deleted. The implementation dates of the requirements of 49 CFR parts 40 and 382 will go into effect on July 1, 1996, for large foreign employers, and will go into effect on July 1, 1997, for small foreign employers. Accordingly, § 382.115 is being amended to require foreign-based carriers to implement the rule by July 1, 1996, and July 1, 1997, whichever is applicable.

IV. Education and Technical Assistance

The FHWA is committed to assisting foreign governments, motor carriers, and drivers to understand and implement effective alcohol and controlled substance testing programs that meet the FHWA requirements. The FHWA will, to the extent possible, make presentations, attend seminars, and meet with interested parties to assist with the foreign implementation of the FHWA alcohol and controlled substances testing rules. If a group of foreign entities would like FHWA involvement in educating their members or providing technical assistance in implementing alcohol and controlled substances testing programs, please provide a written request to the FHWA International Program, at least 4 weeks in advance, at the address noted above under the caption **FOR FURTHER INFORMATION CONTACT.**

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 but is significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA prepared a regulatory evaluation for the proposed rule. No comments were received with respect to the evaluation. The evaluation indicates that the rule will have a positive impact of $8.5 million discounted over ten years. A copy of the regulatory evaluation is included in the docket for this final rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the regulatory evaluation, the FHWA believes that the impact on small entities will be minimal. Furthermore, it should be noted that the Omnibus Act mandates alcohol and controlled substances testing irrespective of the size of the entities.

For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criterion contained in Executive Order 12612, and it has been determined that the proposed rulemaking has no federalism implications to warrant the preparation of a Federalism Assessment. This action would require foreign-domiciled employers to test their drivers for the use of controlled substances and alcohol. The action does not place any requirements on the States to comply with this rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements associated with compliance by foreign employers and drivers was included in the paperwork approval request submitted to and approved on February 28, 1994, by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 2125- 0543, approved through March 31, 1997.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR 382

Alcohol testing, Controlled substances testing, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: September 19, 1995.

Federico Peña,

Secretary of Transportation.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 49 CFR, subtitle B, chapter III, part 382 as set forth below:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING—[AMENDED]

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

2. Section 382.103 is revised to read as follows:

§ 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The Canadian National Safety Code commercial driver's license requirements.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement an alcohol and controlled substances testing program that includes more persons than himself/herself as covered employees in the random testing pool.

(c) This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 654 of this title; or

(2) Granted a full waiver from the requirements of the commercial driver's license program; or

(3) Who have been granted a State option waiver from the requirements of part 383 of this subchapter.

3. Section 382.115 is revised to read as follows:

§ 382.115 Starting date for testing programs.

(a) *Large domestic employers.* Each employer with fifty or more drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1995.

(b) *Small domestic employers.* Each employer with fewer than fifty drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1996.

(c) *All domestic employers.* Each domestic employer that begins commercial motor vehicle operations after March 17, 1994, but before January 1, 1996, will implement the requirements of this part beginning on January 1, 1996. However, such an employer may be subject to the requirements of Part 391, Subpart H on the date they begin operations, if operating commercial motor vehicles in interstate commerce. A domestic employer that begins commercial motor vehicle operations on or after January 1, 1996, will implement the requirements of this part on the date the employer begins such operations.

(d) *Large foreign employers.* Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(e) *Small foreign employers.* Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(f) *All foreign employers.* Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

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Friday, September 22, 1995

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

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.

21.....48369
35.....48623
73.....46497
Proposed Rules:
30.....46784
40.....46784
50 .....47314, 47716, 48427
52.....47314
70.....46784
100.....47314
210.....49195
211.....49195
212.....49195
303.....49195
305.....49195
430.....47497
437.....48935
459.....49195
465.....49195
730.....49195
761.....49195
762.....49195
763.....49195
790.....49195
792.....49195
794.....49195
796.....49195
797.....49195
798.....49195
799.....49195
830.....47498
834.....47498
1020.....49195

12 CFR

3.....46170, 47455
208.....46170
225.....46170
325.....46170
601.....47453
900.....49198
922.....49198
Proposed Rules:
2.....47498
23.....46246
213.....48752, 48769
353.....47719
360.....48935
613.....47103
614.....47103
618.....47103
619.....47103
626.....47103

13 CFR

Proposed Rules:
108.....46789

14 CFR

25.....47458
39 .....46216, 46758, 46760, 46761, 46763, 46765, 47265, 47465, 47677, 47678, 47679, 47682, 47683, 47685, 47687, 47689, 47862, 47864, 48626, 48628, 48630, 48631, 48632, 48634, 48635, 48636, 48638, 48639, 48882
71 .....47266, 48022, 48023, 48350, 48641, 48642, 48749, 48884, 48888
73.....48889
91.....48643, 49138
97 .....46218, 48024, 48025
399.....46018
Proposed Rules:
21.....48790
39 .....45683, 46541, 46542, 46544, 46790, 46792, 47314, 47501, 47896, 47899, 47901, 47903, 48428, 48429, 48431, 48433
71 .....46547, 47503, 48937

15 CFR

275.....45659
Proposed Rules:
945.....48000

16 CFR

24.....48027
231.....48027
247.....48027
600.....45659
1700.....48890
Proposed Rules:
24.....48056
400.....48063
402.....48065
404.....48067
405.....48070
413.....48071
417.....48073
418.....48075

17 CFR

201.....46498
230.....47691
240.....47691
270.....47041
274.....47041
Proposed Rules:
239.....47844
240.....48078
270.....47844
274.....47844
275.....47844

19 CFR

4.....48027
10 .....46188, 46334, 48645
12 .....46188, 46334, 47466, 48645
24.....46334, 48645
102.....46188
123.....46334, 48645
134.....46334, 48645
162.....46334, 48645
174.....46334, 48645
177.....46334, 48645
178.....46188, 48645
181.....46334, 48645
191.....46334, 48645
206.....46500
Proposed Rules:
101.....47504, 47505

20 CFR

404.....47469
416.....47469
Proposed Rules:
220.....47122
404.....47126
416.....47126

21 CFR

5.....47267
19.....47477
175.....47478, 48645
176.....47205
177.....48648
184.....48890
510.....47052, 47480
520.....47052
522.....48650
524.....48651
529.....48893
558.....47052
1000.....48374
1002.....48374
Proposed Rules:
50.....49086
56.....49086
184.....48939
312.....46794, 49086
314.....46794, 49086
601.....49086
812.....49086
814.....49086
862.....45685
864.....46718
866.....45685
868.....45685, 46718
870.....45685, 46718
872.....45685, 46718
874.....45685
876.....45685, 46718
878.....45685
880.....45685, 46718
882.....45685, 46718
884.....45685, 46718
886.....45685
888.....45685, 46718
890.....45685, 46718
892.....45685
895.....46251
898.....46251

23 CFR

640.....47480
655.....49136

24 CFR

1.....47260
3.....47260
8.....47260
11.....47260
15.....47260
16.....47260
24.....47260
39.....47260
40.....47260
49.....47260
58.....48610
86.....47260
90.....47260
103.....47260
106.....47260
120.....47260
130.....47260
200.....47260, 47840
205.....47260
209.....47260
210.....47260
211.....47260
224.....47260
225.....47260
226.....47260
227.....47260
228.....47260
229.....47260
238.....47260
240.....47260
250.....47260
251.....48596
252.....48596
255.....48596
270.....47260
271.....47260
277.....47260
278.....47260
500.....47260
511.....47260
575.....47260
577.....47260
578.....47260
579.....47260
580.....47260
595.....47260
596.....47260
598.....47260
599.....47260
600.....47260
811.....47260
882.....45661
887.....45661
888.....48278
900.....47260
907.....47260
965.....47260
967.....47260
982.....45661
983.....45661
1730.....47260
1800.....47260
1895.....47260
2700.....47260
Proposed Rules:
3500.....47650

25 CFR

151.....48894
Proposed Rules:
Ch. I.....47131
63.....45982

26 CFR

1 .....45661, 46500, 47053, 49199, 49218
4.....46500
31.....49199
602 .....46500, 49199, 49218
Proposed Rules:
1 .....46548, 47723, 49236

27 CFR

9.....47053
47.....47866
Proposed Rules:
4.....47506
5.....47506
7.....47506
13.....47506
19.....47506

28 CFR

0.....46018
541.....46484
548.....46484
Proposed Rules:
547.....47648

29 CFR

552.....46766
697.....47484
801.....46530
1601.....46219
1910.....47022
2619.....47867
2676.....47867
Proposed Rules:
4.....46553
5.....46553

552.....46797
1926.....47512
1952.....47131

30 CFR

914.....47692
944.....47695
950.....47699
Proposed Rules:
Ch. II.....46556
916.....47314
943.....47316, 48675, 48677
950.....48678

31 CFR

560.....47061
Proposed Rules:
103.....46556
240.....48940

32 CFR

92.....46019
505.....48651
Proposed Rules:
311.....47905

33 CFR

1.....49222
100.....45668, 47269
110.....45776
117.....47270
165.....45669, 45670, 47270, 47271, 47869, 47870, 48894
Proposed Rules:
117.....46069, 47317
162.....47905
165.....47907
166.....49237

34 CFR

74.....46492
75.....46492
76.....46492
81.....46492
700.....47808
Proposed Rules:
75.....46004, 48844
668.....49114, 49156, 49178
674.....49114
675.....49114
676.....49114
682.....49114, 49130
685.....48848, 48858, 49114
690.....49114

36 CFR

7.....46562, 47701
223.....46890
Proposed Rules:
13.....47513
1206.....46798

38 CFR

1.....48028, 48029, 48387
2.....48029
3.....46531
4.....49225
21.....46533
Proposed Rules:
17.....47133

39 CFR

447.....47241
Proposed Rules:
955.....47514

40 CFR

9.....45948, 48388
51.....48029
52.....46020, 46021, 46024, 46025, 46029, 46220, 46222, 46535, 46768, 47074, 47076, 47081, 47084, 47085, 47088, 47089, 47273, 47276, 47280, 47285, 47288, 47290, 48896
55.....47292
60.....47095
61.....46206
63.....45948, 48388
69.....48037
70.....45671, 46771, 47296
81.....47485, 48653
180.....47487, 47871, 48655, 48657, 48659
228.....49228
280.....46691
281.....46691, 47089, 47097, 47280, 47297
282.....47300
300.....47489, 48902, 49230
716.....48660
763.....49231
799.....48902
Proposed Rules:
15.....47135
32.....47135
52.....46070, 46071, 46252, 46802, 47137, 47138, 47139, 47318, 47319, 47320, 47324, 47907, 47911
55.....47140
63.....48081
64.....48679
69.....47515
70.....45685, 46072, 47522, 48085, 48435, 48679, 48942, 48944
81.....47142, 47324, 47325, 47529, 48439
136.....47325
170.....48680
180.....47529, 48681
186.....49142
260.....49239
264.....49239
265.....49239
281.....49239
300.....47918, 48683
372.....46076, 47334
721.....47531, 47533
799.....48948

41 CFR

Proposed Rules:
50–201.....46553
50–206.....46553

42 CFR

400.....48749
405.....48039, 48417
411.....48417, 48749
412.....45778
413.....45778
417.....45673, 46228
424.....45778
485.....45778
489.....45778
Proposed Rules:
441.....48442
447.....48442
493.....47534, L47982

43 CFR

1820.....48904
Public Land Orders:
7159.....47874
7160.....48904
Proposed Rules:
3170.....47920

44 CFR

64.....46030, 46037
65.....46038, 46040, 46042, 46043
67.....46044
Proposed Rules:
67.....46079, 46085

45 CFR

670.....46234
1355.....46887
Proposed Rules:
1633.....48950
1634.....48951
1635.....48956

46 CFR

25.....48044
28.....48044
30.....48044
31.....48044
35.....48044
37.....48044
40.....48044
50.....48044
54.....48044
55.....48044
56.....48044
57.....48044
61.....48044
67.....48044
70.....48044
71.....48044
72.....48044
76.....48044
78.....48044
79.....48044
90.....48044
91.....48044
95.....48044
97.....48044
99.....48044
106.....48044
150.....48044
154.....48044
171.....48044
174.....48044
188.....48044
189.....48044
552.....46047
Proposed Rules:
40.....46087
154.....46087

47 CFR

2.....47302, 48905
18.....47302
64.....46537, 49232
69.....46537
73.....46063, 47303, 47490, 47703, 47875, 47876, 48425, 48426, 48907, 49234
76.....47876
90.....46537, 47303, 48913
Proposed Rules:
15.....49241
25.....46252
36.....46803
64.....48957
73.....46562, 46563, 47337, 48684, 49241, 49242
76.....46805
80.....47543
90.....46564, 46566, 48490

48 CFR

Ch. 1.....48206
1.....48208, 48224
2.....48231
3.....48231, 48258
4.....48208, 48258
5.....48231, 48258, 48272
6.....48231, 48258
7.....48231
8.....48231
9.....47304, 48231, 48258
10.....48231
11.....48231
12.....48231
14.....48208, 48231, 48258
15.....48208, 48231, 48258
16.....48208, 48231, 48258
17.....48258
19.....48258
20.....48258
22.....48231
23.....48231
25.....48258
26.....48258
28.....48272
31.....48208, 48231
32.....48272, 48274
33.....48208, 48224, 48274
36.....48208, 48231
42.....48224, 48231, 48258
44.....48231, 48258
45.....48208
46.....48208, 48231
47.....48231
49.....48208, 48231
50.....48224
52.....48208, 48224, 48231, 48258, 48272, 48274
53.....48208, 48231, 48258
923.....47491
970.....47491
1301.....47309
1302.....47309
1304.....47309
1305.....47309
1306.....47309
1307.....47309
1308.....47309
1309.....47309
1314.....47309
1315.....47309
1316.....47309
1317.....47309
1319.....47309
1322.....47309
1324.....47309
1325.....47309
1331.....47309
1332.....47309
1333.....47309
1334.....47309
1336.....47309
1337.....47309
1342.....47309
1345.....47309
1801.....47704
1803.....47099
1804.....47704