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Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Laurice Clark, 202–523–3517

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WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
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WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Rules and Regulations

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

FARM CREDIT ADMINISTRATION

12 CFR Part 600

Organization and Functions

AGENCY: Farm Credit Administration.

ACTION: Final Rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts technical amendments to the regulations relating to the organization and functions of the Farm Credit Administration (FCA). The regulations implement certain statutory changes to the operations of the FCA and the FCA Board resulting from the enactment of the Agricultural Credit Act of 1987 (1987 Act) and contain certain technical changes.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles R. Row, Chief, Human Resources Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4135, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The 1987 Act amended some sections of the Farm Credit Act of 1971 (Act) relating to the authorities of the FCA Board and the Chairman and their respective authorities concerning the appointment of personnel. Among other things, the 1987 Act provided for the appointment of the personal staff of FCA Board Members by the Members, made Office Director appointments by the Chairman subject to the approval of the FCA Board, and clarified the authority of the Chairman to delegate certain powers. These amendments to the FCA regulations in 12 CFR Part 600 implement these statutory changes and include a revised description of the organization of the FCA.

The amendments contained in these regulations relate to the following matters:

(1) Provide for the appointment of an FCA Board Member's personal staff by the Board Member.

(2) Provide for the appointment by the Chairman of FCA Office Directors to be subject to the approval of the FCA Board.

(3) Require FCA Board approval for the Chairman to delegate powers specifically reserved to the Chairman by the Act.

(4) Redescribe the organization and the functions of the Offices of the FCA.

In acting on the regulations, the Board determined that the amendments conform the regulations to statutory changes and relate to agency management and personnel and, therefore, do not involve rulemaking as defined in 5 U.S.C. 553(a)(2). The purpose of the rulemaking requirements of the Administrative Procedure Act is to allow public participation in the promulgation of rules which have a substantial impact on those regulated. Since these regulations contain nondiscretionary implementations of statutory changes or relate to agency management and personnel, no public participation is required under the Administrative Procedure Act nor would such participation serve a useful purpose.

Even if these regulations did involve rules for purposes of 5 U.S.C. 553(a), the Board finds that notice and public comment are unnecessary and contrary to the public interest. 5 U.S.C. 553(b) (A) and (B) provide that when regulations involve matters of agency organization, or where the agency finds good cause that the notice and public comment are unnecessary or contrary to the public interest, the agency may publish regulations in final form. As discussed above, these regulations involve technical amendments or conforming changes required by the 1987 Act. It would be contrary to the public interest to delay these changes since they are necessary to the public's awareness and understanding of the changes to the FCA's operations which resulted from the 1987 Act. Without these amendments, the existing regulations are inaccurate and may be confusing to the public.

For the same reasons, the Board has determined, in accordance with 5 U.S.C. 553(d), that these regulations will be effective immediately upon publication.

The Board has determined also, for the same reasons, that a delay in the effective date in accordance with section 5.17(c)(2) of the Act is unnecessary and would be contrary to the intent of Congress.

Accordingly, the Board directs that the regulations are effective immediately upon publication.

List of Subjects in 12 CFR Part 600

Organization and functions (Government agencies).

As stated in the preamble, Part 600 of Chapter VI, Title 12, of the Code of Federal Regulations is revised as follows:

PART 600—ORGANIZATION AND FUNCTIONS

Subpart A—Farm Credit Administration

Sec.
600.1 The Farm Credit Act.
600.2 Farm Credit Administration.
600.3 Farm Credit Administration Board.
600.4 Chairman of the Farm Credit Administration Board.
600.5 Organization of the Farm Credit Administration.

Subpart B—[Reserved]

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252.

Subpart A—Farm Credit Administration

§ 600.1 The Farm Credit Act.

The Farm Credit Act of 1971, Pub. L. 92-181 recodified and replaced the prior laws under which the Farm Credit Administration and the institutions of the Farm Credit System were organized and operated. The prior laws, which were repealed and superseded by the Act, are identified in section 5.10(a) of the Act. Subsequent amendments to the Act and enactment dates are as follows: Pub. L. 94-184, December 31, 1975; Pub. L. 95-443, October 10, 1978; Pub. L. 96-592, December 24, 1980; Pub. L. 99-190, December 19, 1985; Pub. L. 99-198, December 23, 1985; Pub. L. 99-205, December 23, 1985; Pub. L. 99-509, October 21, 1986; Pub. L. 100-233, January 1988. The law is codified at 12 U.S.C. 2000, *et. seq.*

§ 600.2 Farm Credit Administration.

The Farm Credit Administration is an independent, non-appropriated fund agency in the executive branch of the Federal Government. It is composed of

the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration. The mailing address of the central offices of the Farm Credit Administration is McLean, Virginia 22102–5090. The hours of business in the central offices are 8:30 a.m.–5:00 p.m. (eastern time), Monday through Friday, excluding Federal holidays.

§ 600.3 Farm Credit Administration Board.

(a) *Organization.* The Farm Credit Administration Board (Board) is a full-time, three-member board entrusted with the responsibility to manage the Farm Credit Administration. The Board consists of three members appointed by the President with the advice and consent of the Senate. The Board may not contain more than two members of the same political party. One member is designated by the President as Chairman of the Board for the duration of such member's term. Each member of the Board shall serve a single 6-year term and cannot be reappointed except in the case of such members who are initially appointed for less than a 6-year term on initial formation of the Board or any member who is appointed to fill an unexpired term of less than 3 years. A member of the Board shall continue to serve subsequent to the expiration of that member's term until the point in time at which an eligible successor has taken his or her oath of office. A person appointed to the Board shall subscribe to the oath of office within 15 days after having received notice of appointment. Each Board member is assisted by a staff.

(b) *Functions and responsibilities.* The Board manages, administers, and establishes policies for the Farm Credit Administration. Specifically, the Board prescribes the rules and regulations necessary for the implementation of the Farm Credit Act of 1971, as amended, and provides for the examination of Farm Credit System institutions and for the performance of all the powers and duties vested in the Farm Credit Administration.

§ 600.4 Chairman of the Farm Credit Administration Board.

(a) The Chairman of the Board is the Chief Executive Officer of the Farm Credit Administration. The Chairman is responsible for directing the implementation of the policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration. In carrying out policies as directed by the Board, the Chairman acts as the spokesperson for the Board and represents the Board and the Farm Credit Administration in their official relations within the Federal Government. Under policies adopted by the Board, the Chairman consults with the Secretary of Treasury, Board of Governors of the Federal Reserve System, and the Secretary of Agriculture on specific matters.

(b) The Chairman appoints such personnel as may be necessary to carry out the functions of the Farm Credit Administration except that the appointment of Office Directors by the Chairman shall be subject to the approval of the Board, and regular, full-time personnel employed in the immediate office of each Board member shall be appointed by each such Board member. The powers of the Chairman as Chief Executive Officer necessary for day-to-day management may be exercised and performed by the Chairman through such other officers and employees of the Farm Credit Administration as the Chairman may designate except that the Chairman may not delegate powers specifically reserved to the Chairman by the Act without the approval of the Board.

§ 600.5 Organization of the Farm Credit Administration.

(a) *Office Directors.* Each Office of the Farm Credit Administration is headed by a Director who may, with the approval of the Chairman, establish and fix the responsibilities of the divisions and such other units as the Director deems necessary for the efficient functioning of the Office.

(b) *Offices and Functions*—(1) *Office of Examination.* The Office of Examination plans and conducts examinations of Farm Credit System institutions and other institutions as required by law and prepares and issues reports of examination which summarize examination findings and recommends corrective action as appropriate. The Office recommends formal administrative action by the agency to correct conditions when an institution of the Farm Credit System is found to be operating in an unsafe or unsound manner or is in violation of law or regulation. The Office Director prepares examination schedules for approval by the Board and advises the Board on matters affecting policy, regulation, and legislation relating to examination activities. The Director, Office of Examination, is the Chief Examiner of the Farm Credit Administration.

(2) *Office of Analysis and Supervision.* The Office of Analysis and Supervision issues or recommends to the Board, as appropriate, banking and prudential standards for the operation Farm Credit System institutions, changes in System charters and other actions of the institutions as required by law or regulation, and exercises statutory enforcement powers where unsafe and unsound System practices are found or where the rules, regulations, or orders of the Board are violated. The Office collects financial data from System institutions and conducts ongoing financial and economic analyses.

(3) *Office of Administration.* The Office of Administration provides agency administrative management for the agency budget, accounting, human resources, equal opportunity programs, training, procurement, electronic data processing, document processing, property, supply, facilities, records and other administrative services.

(4) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the Board, the Chairman, and the agency staff. The Office interprets the Farm Credit Act of 1971, as amended, and other applicable laws, coordinates the preparation of agency rules and regulations, and represents the agency in litigation, in enforcement proceedings brought by the agency, and in proceedings before other administrative bodies. The Director, Office of General Counsel, is the General Counsel of the Farm Credit Administration.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs coordinates and disseminates all communication by the agency with the Congress and plans and implements all public communications. The Office is the first source of information to the Farm Credit System and borrowers concerning the Farm Credit Administration and provides other representational services for the Board and the agency to the public.

(6) *Office of Internal Audit.* The Office of Internal Audit reviews and evaluates the adequacy and effectiveness of the controls and procedures of all operating and administrative offices of the agency.

(c) *Additional Information.* Current information on the organization of the Farm Credit Administration may be obtained from the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virgnia, 22102–5090.

Subpart B—[Reserved]

Date: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10435 Filed 5-10-88; 8:45 am]

BILLING CODE 6705-01-M

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12 CFR Part 611

Farm Credit System; Merger and Reorganization Proposals

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA) Board adopts interim regulations and requests public comments thereon, which implement the provisions of section 412 of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233. The interim regulations provide for the establishment of a Special Committee on the Merger of Farm Credit Banks, the procedures for the selection of members to the Committee and the timeframes for obtaining required approvals and conducting stockholder votes on merger plans.

DATES: This regulation is effective May 11, 1988.

Written comments must be received on or before June 10, 1988.

ADDRESSES: Submit comments (in triplicate) in writing to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

James F. Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4475

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the FCA published an Advance Notice of Proposed Rulemaking (53 FR 4416) seeking public comments on the implementation of the provisions of the 1987 Act relating to the reorganization of Farm Credit System institutions. Among the provisions upon which comments were requested was section 412 of the 1987 Act which provides for the creation of a committee to develop a proposal for the merger of the district Farm Credit Banks.

The FCA received comments from the Farm Credit Corporation of America (FCCA) and the banks in one Farm Credit district regarding section 412 of the 1987 Act. Both commentators recommended that the regulations include a provision for the selection of Special Committee members by current members of the district board, if the Farm Credit Bank is not established in the district prior to the expiration of the six-month period. Both commentators also suggested that the regulations address required procedures relating to the timeframes for the submission of the Committee's proposal to the FCA and the stockholders. In addition, the commentators suggested that the FCA authorize the Special Committee members to elect a chairman from among their members and provide for the election by each Farm Credit Bank Board of an alternate Special Committee member.

The FCA Board adopts an interim regulation at 12 CFR 611.1140 which sets forth certain requirements governing the organization of the Special Committee and timetables for the submission of its report to the FCA and to stockholders. The regulation clarifies that the proposal of the Special Committee may include individual merger plans involving one or more Farm Credit Banks. The regulation provides that in a district where the board of directors of the Farm Credit Bank will not have its first meeting prior to July 5, 1988, the Special Committee member and alternate shall be elected prior to such date by the members of the District Board elected by the Federal land bank associations, production credit associations, and borrowers at large. Finally, the regulation provides that the Special Committee proposal and each individual merger plan, together with disclosure material, shall be submitted to the FCA not later than 90 days prior to the scheduled stockholder votes. In addition, the stockholder votes shall be scheduled to occur not later than 90 days prior to the effective date of the merger, which, in any event, shall not be later than July 5, 1989.

In accordance with 5 U.S.C. 553 (b) and (c), the FCA finds that additional public comments prior to the effective date of this regulation would be impracticable and contrary to the public interest. The FCA Board considered all of the public comments received in response to the Advance Notice of Proposed Rulemaking relating to the implementation of section 412 of the 1987 Act. In light of the statutory requirement for the formation of the Special Committee, any delay in the effective date of the regulation would delay the selection of directors to the Special Committee and prevent the committee from commencing its work in a timely fashion. For the same reasons, the FCA Board finds, in accordance with section 5.17(c)(2) of the Farm Credit Act of 1971, as amended, that an emergency exists which requires that these regulations be effective prior to the expiration of the 30-day congressional review period.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Organizations and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; Sec. 412 of Pub. L. 100-233.

2. Part 611, Subpart J is revised to read as follows:

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

§ 611.1140 Consolidation of Farm Credit Banks.

(a) In accordance with section 412 of the Agricultural Credit Act of 1987, representatives of each Farm Credit Bank Board are required to participate in the development of a proposal under which the stockholders of each or some of such banks will vote on merger plans. The proposal may provide for mergers of Farm Credit Banks that will result in the reduction in the number of Farm Credit Banks to no less than six such banks.

(b)(1) For the purpose of developing the merger proposal for the Farm Credit Banks and the individual merger plans, there will be established not later than July 5, 1988, a Special Committee on the Merger of Farm Credit Banks. The Special Committee shall be composed of one director from the board of directors of each Farm Credit Bank and the members of the Farm Credit System Assistance Board. The Special Committee shall elect a chairman from among its members.

(2) The Board of Directors of each Farm Credit Bank shall elect its representative to the Special Committee by majority vote from among its members. In those districts where the

Farm Credit Bank will not have its first board of directors' meeting prior to July 5, 1988, the Special Committee member shall be elected prior to such date by the members of the District Board elected by the Federal land bank associations, production credit associations and borrowers at large. Each board of directors shall also elect an alternate member of the Special Committee who shall attend meetings and vote on matters when the principal representative is unable to attend.

(c) The proposal developed by the Special Committee may include one or more merger plans involving two or more Farm Credit Banks. Upon approval of the entire proposal by a majority of the members of the Farm Credit System Assistance Board and approval of any merger plan contained in the proposal by the Special Committee representatives of the banks involved in such merger, the merger plans shall be submitted to the stockholders of the banks involved.

(d) The proposal of the Special Committee and each merger plan, together with the disclosure materials, shall be submitted to the Farm Credit Administration for approval not later than 90 days prior to the scheduled date for the stockholder votes for each merger involved. The stockholder votes shall be scheduled to occur not later than 90 days prior to the effective date of the merger, which shall not be later than July 5, 1989.

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10437 Filed 5-10-88; 8:45 am]

BILLING CODE 6505-01-M

12 CFR Part 620

Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts in final form, with a minor clarifying change, the interim rule amending Part 620 that was published with request for comment on February 5, 1988. 53 FR 3334. The rule relates to disclosure of loans involving a greater than normal risk of collectibility to senior officers and directors and their immediate families and affiliated organizations. The rule implements a provision of the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act), which amends section 5.17(a)(9) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2252(a)(9), by placing limitations on the disclosure the FCA can require in shareholder reports of the condition or classification of loans to senior officers and directors and their immediate families.

DATES: This regulation shall become effective after the expiration of 30 days from publication during which either or both houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020

or

James, Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4483, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On February 5, 1988, the FCA published an interim rule with request for comment that implements a provision of the 1987 Act. Section 424 of the 1987 Act amended section 5.17(a)(19) of the 1971 Act, 12 U.S.C. 2252(a)(9), to prohibit the FCA from requiring in each institution's shareholder reports, disclosure of the condition or classification of a loan to a director who has resigned before the time for filing the applicable report with the Farm Credit Administration or whose term of office will expire no later than the date of the shareholder meeting to which the statement relates. In addition, the statutory amendment limits the family members from whom disclosure can be required to those who reside with directors or those in whose loan or business operation the director has a material financial or legal interest. The legislative history of the section indicates that Congress intended the limitations on disclosure to apply to senior officers as well. (See H.R. Rep. No. 490, 100th Cong., 1st Sess. 268.) The FCA stated in the preamble to the interim rule that the term "resign" will be interpreted to mean that the officer or director has actually vacated the office.

The FCA received three comments on the interim rule, one from the Farm Credit Corporation of America (FCCA), on behalf of its member banks; and one from each of two Farm Credit Districts, concurring with the FCCA comments. The FCCA supported the rule but requested several clarifications.

First, the FCCA requested clarification that the formal resignation can occur at any time up to the actual time of filing of the applicable report with the FCA. The FCA confirms the FCCA's interpretation, with the understanding that the actual filing will occur no later than the time for filing required by the regulation. Section 620.3(j)(3)(ii) of the interim rule has been changed in the final rule to clarify this point, by inserting the parenthetical phrase "(but in no case later than the date of actual filing)" after "Farm Credit Administration." The FCA also emphasizes that the officer or director must also have actually left office prior to the required time for filing of the applicable report, but in no case later than the date of the actual filing of the report. The FCA will monitor any such resignations through its examination process to assure that they have been accomplished in good faith and not merely to circumvent the regulation.

Second, the FCCA requested confirmation of its understanding that where the term of office will expire at an annual meeting of the stockholders and the director is not standing for re-election, a resignation prior to the date of the stockholder meeting would not be necessary in order to avoid disclosure. The FCA confirms that it intends the regulation to be so understood.

Third, the FCCA requested confirmation that if there are no loans to senior officers or directors or their immediate families requiring disclosure because they involve a greater than normal risk of collectibility, the separate statement required by the interim rule should be a general statement that there are no loans to senior officers and directors. The FCCA further stated its understanding that if there were such loans, they would be disclosed unless there were a timely resignation by the senior officer or director involved or an expiration of the term of office of the director. The FCA intends the regulation to operate as follows: If there are no loans to senior officers and directors, their affiliated organizations, or their immediate family members, requiring disclosure because they involve a greater than normal risk of collectibility (except for any loans to persons who have resigned in a timely manner or who do not seek re-election at the annual meeting), the institution should state that there are no loans to senior officers or directors, their affiliated organizations, or immediate family members who reside in the same household or in whose loan or business operation the officer or director has a

material financial or legal interest, that require disclosure because they involve a greater than normal risk of collectibility. If there are such loans requiring disclosure because they require a greater than normal risk of collectibility, the institution should make such disclosure and state that except as disclosed in the report, there are no such loans requiring disclosure because they involve a greater than normal risk of collectibility.

List of Subjects in 12 CFR Part 620

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements.

Accordingly, the interim rule amending 12 CFR Part 620 that was published at 53 FR 3334 on February 5, 1988 is adopted as a final rule with the following change:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 is revised to read as follows:

Authority: Secs. 5.17; 12 U.S.C. 2252; sec. 424 of Pub. L. 100-233.

2. Section 620.3(j)(3)(ii) is revised to read as follows:

§ 620.3 Contents of the Annual Report to Shareholders.

* * * * *

(j) * * *

(3) *Loans to senior officers and directors.* * * *

(ii) To the extent applicable, state that no loan to a senior officers or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectibility; provided that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case later than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

Dated: May 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-10436 Filed 5-10-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-23; Amendment 39-5911]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222, 222B and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 222, 222B, and 222U helicopters by individual letters. The AD requires revising the FAA-approved Rotocraft Flight Manual Emergency/Malfunction Procedures and installing a red engine chip light lens. The AD was needed to detect and prevent a possible impending engine power turbine wheel burst which could result in failure of the adjacent engine, severance of the tail rotor driveshaft, and subsequent loss of the helicopter.

EFFECTIVE DATE: May 27, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 87-13-01, issued June 19, 1987, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Regional Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: On June 19, 1987, priority letter AD No. 87-13-01 was issued and made effective immediately as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 222, 222B, and 222U helicopters. The AD required engine shutdown in the event of a chip light due to a possible No. 3 bearing problem. AD action was necessary to detect and prevent a possible impending power turbine wheel burst.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued June 19, 1987, to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 222, 222B, and 222U helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to Model 222, 222B, and 222U helicopters (LTS 101 series engines installed) certificated in any category. (Airworthiness Docket No. 87-ASW-23)

Compliance is required as indicated, unless already accomplished.

To detect and prevent a possible impending engine power turbine wheel burst which could result in failure of the adjacent engine, severance of the tail rotor driveshaft, and subsequent loss of the helicopter, accomplish the following:

(a) If the scavenge debris monitor *is* installed on each engine and *is* wired to a separate red engine chip light which incorporates a light test feature (as previously required by AD 86-17-12, R1, on Bell 222B and 222U helicopters), accomplish the following before further flight:

(1) Revise the FAA-approved Rotorcraft Flight Manual Emergency/Malfunction Procedures, Section 3, by adding the following red engine chip light warning procedure to Table 3-1 (warning lights):

Eng 1—Chip (Red) or Eng 2—Chip (Red)
Shut down affected engine. Land as soon as practical.

And add the following warning information:

WARNING

"IN THE EVENT OF FLUCTUATING OR LOSS OF POWER TURBINE (N_P) SPEED INDICATION, SHUT DOWN THE AFFECTED ENGINE AS SOON AS POSSIBLE. LAND AS SOON AS PRACTICAL."

(2) Revise the FAA-approved Rotorcraft Flight Manual Normal Procedures—Interior and Prestart Check by adding the following:

Eng 1—Chip (Red), Eng 2—Chip (Red)

Activate light test feature and check illumination.

Note: The FAA approved-Rotorcraft Flight Manual Emergency/Malfunction Procedures, Section 3, Table 3-2 (caution lights), Eng 1—Chip (Amber), Eng 2—Chip (Amber), does not specify engine shutdown on the basis of the amber chip light alone and should remain unchanged.

(b) If the scavenge debris monitor *is not* installed or *is not* separately wired, revise the FAA-approved Rotorcraft Flight Manual Emergency/Malfunction Procedures, Section 3, Table 3-2 (caution lights), before further flight, by changing the current engine chip light procedure to read as follows:

Eng 1—Chip (Amber), Eng 2—Chip (Amber)
Shut down affected engine. Land as soon as practical.

And add the following information:

WARNING

"IN THE EVENT OF FLUCTUATING OR LOSS OF POWER TURBINE (N_P) SPEED INDICATION, SHUT DOWN THE AFFECTED ENGINE AS SOON AS POSSIBLE. LAND AS SOON AS PRACTICAL."

Note: The scavenge debris monitor may be installed and wired to a separate red engine chip light so that the less stringent requirements of paragraph (a) of this AD apply provided that the details of the chip light wiring modification are approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193-0170.

(c) If the scavenge debris monitor is not installed or not separately wired, replace each amber engine chip segment lens no later than December 31, 1987, with a red engine chip segment lens or by an equivalent red light indication which is suitably identified. Once this has been accomplished, remove the flight manual changes prescribed in paragraph (b) of this AD and add the flight manual changes prescribed in paragraph (a)(1) of this AD.

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193-0170.

This amendment becomes effective May 27, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD NO. 87-13-01, issued June 19, 1987, which contained this amendment.

Issued in Fort Worth, Texas, April 18, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-10410 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-37-AD; Amdt. 39-5918]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which requires inspection for chafing and leaks on the variable stator vane control system fuel manifold, inspection for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and relocation of the left fan cowl hold open rod and brackets. This amendment is prompted by reports of damage to variable stator vane control system fuel manifolds and chafing on the fuel supply tube lower clamp. This condition, if not corrected, could result in fuel leakage causing a potential fire hazard and subsequent engine shutdown.

DATE: Effective May 27, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During the course of an investigation, three separate incidents of chafing and fuel leaks on Boeing Model 737-300 airplanes were found. It was determined that the fifth/ninth stage pneumatic duct coupling clamps caused chafing on the variable stator vane control system fuel manifolds, which resulted in two fuel leaks. Airplanes also showed chafing of the fuel supply lower tubing clamp, caused by interference with the left fan cowl hold open rod. This condition, if not corrected, could result in fuel leakage causing a potential fire hazard and subsequent engine shutdown.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-71A1208, dated December 10, 1987, which describes the inspection for correct orientation of the three fifth/ninth stage pneumatic duct coupling clamps, and relocation of left fan cowl hold open rod assembly.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection, modification, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et*

seq.), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737–300 series airplanes listed in Boeing Alert Service Bulletin 737–71A1208, dated December 10, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fuel leaks caused by chafing of the engines fuel tube and variable stator vane manifolds, accomplish the following:

A. Within the next 30 days after the effective date of this AD, inspect the variable stator vane fuel manifold for chafing and leaks, and check orientation of the fifth/ninth stage pneumatic duct coupling clamps, in accordance with Boeing Alert Service Bulletin 737–71A1208, dated December 10, 1987. Repair or replace chafed components and relocate components, as necessary, before further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 27, 1988.

Issued in Seattle, Washington, on April 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10411 Filed 5–10–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–38–AD; Amdt 39–5921]

Airworthiness Directives; SAAB Fairchild Model SF–340A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB Fairchild Model SF–340A series airplanes, which currently requires limitations to the operation of the cabin lighting system in order to eliminate an unsafe condition created by electrical arcing. This amendment requires the deactivation of the circuits providing power to the cabin fluorescent lighting system (overhead and windows lights) during ground and flight operations until the cabin lighting inverter assemblies have been modified. This amendment is prompted by two recent reports of the loss of the braking system caused by the fluorescent lighting inverter internal failure. This condition, if not corrected, could lead to the loss of the wheel brake system and cause electromagnetic interference with other systems.

DATE: Effective June 3, 1988.

ADDRESSES: The applicable service information may be obtained from SAAB Aircraft, Product Support S–58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft certification office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On October 22, 1987, FAA issued AD 85–25–54–R1, Amendment 39–5760 (52 FR 41975; November 2, 1987), to require certain limitations to the operation of the cabin lighting system. That action was prompted by a report of electrical arcing caused by a short circuit in the overhead lighting system wiring, which resulted in smoke entering the cabin during flight.

Subsequent to the issuance of that AD, the FAA approved, as an alternate means of compliance, the activation and continued use of the fluorescent lighting system under certain conditions.

Since the time that this approval was granted, there have been two reports of brake system loss caused by cabin fluorescent lighting inverter internal solder connection failure. Electromagnetic interference was also noted with the audio system and the stick pusher. This condition, if not corrected, could lead to loss of the wheel brake system and cause electromagnetic interference with other systems.

SAAB has developed an inverter modification kit with improved solder connections, and has issued SAAB Service Bulletin SF340–33–021, dated June 12, 1987, which provides instructions to install these kits. The Swedish Airworthiness Authority (LFV), has classified this service bulletin as mandatory.

This airplane model is manufactured in Sweden and type certification in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the U.S., this AD requires the deactivation of the circuits providing power to the cabin fluorescent lighting system (overhead and window lights) during ground and flight operations, until the fluorescent lighting inverter is modified, in accordance with SAAB Service Bulletin

SF340–33–021, dated June 12, 1987. As noted in AD 85–25–54–R1, installation of the modification described in SAAB-Scania Service Bulletin SF340–33–016, Revision 1, dated April 3, 1987, is retained as an optional terminating action for the requirements of this AD.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85–25–54–R1, Amendment 39–5760 (52 FR 41975; November 2, 1987), with the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF–340 series airplanes, listed in SAAB-SCANIA Service Bulletin SF340–33–016, Revision 1, dated April 3, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent electromagnetic interference with navigation and other systems, and the loss of the wheel brake system, accomplish the following:

A. Within 5 days following the effective date of this AD, incorporate the following, as applicable, into the limitations section of the airplane flight manual. This may be accomplished by including a copy of this AD in the airplane flight manual:

1. For airplanes that do not have the fluorescent lighting inverters modified in accordance with SAAB Service Bulletin SF340–33–021, dated June 12, 1987:

a. During all flight operations and ground operations with the engines running, deactivate the circuits providing power to the cabin internal overhead and window lights by first switching off these lights, and then opening circuits breakers numbers F24 and F25.

b. During operation with the cabin overhead and window lights deactivated, one reading light in each row must be turned on; or for those airplanes so configured, Row B on the flight attendant's panel must be selected "on".

2. For airplanes that have the fluorescent lighting inverters modified in accordance with SAAB Service Bulletin SF340–33–021, dated June 12, 1987: Prior to the first flight of the day, a crew member must inspect the cabin internal overhead and window lights to ensure that all fluorescent lamps are lit. If a lamp is not lit, it must be replaced prior to further flight, or the circuits which power the lamp must be deactivated.

B. Modification of the fluorescent lighting inverter assembly, P/N 18–994, S/N 650–1992 without blue dot, and inverter assembly P/N 18–966, S/N 1100–3420 without blue dot, in accordance with SAAB Service Bulletin SF340–33–021, dated June 12, 1987, constitutes terminating action for the requirements of paragraph A.1., above.

C. Installation of Modification 1422, as described in SAAB-SCANIA Service Bulletin SF340–33–016, Revision 1, dated April 3, 1987, constitutes terminating action for the requirements of paragraph A. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Fairchild, Product Support, S–58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 3, 1988.

Issued in Seattle, Washington, on May 3, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–10409 Filed 5–10–88; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 302

[Docket No. 45614; Amdt. 302–73]

Documentary Services; Operating Hours

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department hereby changes the operating hours for its Documentary Services Division from 9:00 a.m.–5:30 p.m. to 9:00 a.m.–5:00 p.m. (All times are Eastern Standard or Daylight Saving Time, whichever is in effect in the District of Columbia). All persons wishing to file documents with the Division must now do so between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. This correction will continue to provide persons that wish to file documents with the Department more than ample time to do so.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C–50, (202) 366–9307, Department of Transportation, 400 Seventh Street, SW, Washington, DC. 20590.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

Under the 49 CFR 1.57(1) the General Counsel has authority to make corrections to regulations of the Office of the Secretary. In accordance with that

authority, the following correction is made.

List of Subjects in 14 CFR Part 302

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part I of Title 14, Code of Federal Regulations, is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 901, 1001, 1002, 1005, Pub. L. 85–726, as amended, 72 Stat. 737, 742, 743, 754, 758, 760, 763, 770, 783, 788, 794, 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485, Re-organization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91–90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted; 49 U.S.C. Subtitle I; Administrative Procedure Act (5 U.S.C. 551 et seq.).

2. Section 302.3 (a) is revised to read as follows:

§ 302.3 [Amended]

(a) Filing address, date of filing, hours. Documents required by any section of this part to be filed with DOT shall be filed with the Documentary Services Division of DOT, Washington, DC 20590.

Such documents shall be deemed to be filed on the date on which they are actually received by DOT. Documents must be filed between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

* * * * *

Issued in Washington, DC, May 4, 1988.

B. Wayne Vance,

General Counsel.

[FR Doc. 88–10340 Filed 5–10–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80465–8065]

Revision of Validated License Controls on Nd:YAG Surgical Lasers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain Nd:YAG surgical lasers described in paragraph (b) of the "List of 'Lasers' and 'Equipment Containing Lasers' Controlled by ECCN 1522A" in ECCN 1522A on the CCL (Supplement No. 1 to 15 CFR 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Nd:YAG surgical lasers with a continuous wave multimode output power not exceeding 175 watts now require a validated license for export only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan for national security reasons.

Notice of the foreign availability determination on this equipment is published in the Notices section of this **Federal Register**.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. Lerner, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the Export Administration Act of 1979, as amended, does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

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

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the *Validated License Required* paragraph (under the heading "Controls for ECCN 1522A") to read "Country Groups QSTVWYZ, *except Nd:YAG surgical lasers with a rated continuous wave multimode output power not exceeding 175 watts require a*

validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan."

Dated: May 6, 1988.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88-10474 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

31 CFR Part 5

Debt Collection Act of 1982; Administrative Offset

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is issuing final regulations to govern the collection of debts owed to the United States which arise from transactions with the Department, or which are to be collected by withholding from payments made by the Department. These regulations implement debt collection procedures provided under section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365), which is codified in 31 U.S.C. 3716. The Act authorizes the Federal Government to use administrative offset to collect debts. If the debtor is properly notified and given the opportunity to exercise certain due process rights, and the debtor is owed monies by the United States as a result of other transactions, then the debt can be administratively offset from monies owed by the United States without the debtor's consent.

EFFECTIVE DATE: These regulations are effective June 10, 1988.

FOR FURTHER INFORMATION CONTACT: Randolph B. Sim, Office of the Assistant General Counsel, Administrative and General Law, Department of the Treasury, Room 1410 Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Telephone (202) 566-2327.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 ("Act") (Pub. L. 97-365) makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect debts.

Under the Act, administrative offset may be initiated when the head of an agency determines that a debtor is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States, and the the debtor is owed monies by the United States as a result of transactions with a Federal agency.

The debt may then be collected by administratively off-setting the debt against the amount due.

Analysis and Comment

The temporary rule was published in the **Federal Register** on January 2, 1987 (52 FR 51). The comment period closed on February 2, 1987. One comment was submitted during the comment period. The Department has fully considered this comment.

An association of customs brokers and forwarders filed a comment relating to the use of the administrative offset procedure when entry duties above the duty amount deposited upon entry of goods into the United States are assessed by the United States Customs Service. The association points out that 19 U.S.C. 1505(c) provides that:

> Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate Customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.

The association requests that the Department determine that the offset provisions should not be applied to unpaid increased entry duties determined to be due upon liquidation or reliquidation until the Customs Service has disposed of any protest filed in connection with the liquidation or reliquidation. The association states that: (1) An increased duty amount determined at liquidation or reliquidation is not "certain in amount" within the meaning of 31 CFR 5.33(a)(1) until any protest is disposed of; and (2) the protest procedures set forth in 19 U.S.C. 1514 should be considered to constitute the "review of the existence and amount" of the debt provided for by 31 CFR 5.34(c) and 31 CFR 5.35(a). The association notes that in a report on the bill which became the quoted statute, the House Committee on Ways and Means stated:

> The Committee understands that Customs will take no disciplinary action against importers solely on the grounds of failure to pay increased or additional duties on liquidation or reliquidation until a decision is reached on a protest filed under section 514. H.R. Rep. No. 1015, 98th Cong., 2d Sess. 67; *reprinted in* 1984 U.S. Code Cong. and Admin. News 4960, 5026.

The Department does not believe that the factors discussed in the comment provide a basis for modifying the administrative offset regulations. 19 U.S.C. 1505(c) states that "[d]uties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation," and such duties shall be considered delinquent "unless payment of the duties is received by the appropriate Customs officer within 30 days after that date."

Clearly the amount of the duty owed is fixed and due on the date 15 days after the date of liquidation or reliquidation, and delinquent if not paid within 30 days after that date. Such a debt is not merely speculative in amount at this latter point. Therefore, it is consistent with 29 U.S.C. 1505(c) for the Customs Service to initiate proceedings to collect the debt at this latter point. However, the statutory scheme, as evidenced by the quoted text from the House Committee report, does contemplate that an importer generally will be permitted to withhold payment of the duty owed until issuance of a decision on any protest, and the importer must pay interest accruing as a result of this delay if the filed protest is subsequently denied.

The institution of administrative offset under these regulations is a matter of discretion. In view of the considerations discussed above, the Department does not anticipate that administrative offset ordinarily will be used to collect an increased duty due after liquidation or reliquidation until after any protest is decided. However, it is essential that the Customs Service retain the authority to use administrative offset, in the Service's discretion, at any time when, absent such use, the Service's ability to eventually collect the duty may be prejudiced or in jeopardy.

The final regulations incorporate one change from the temporary regulations. The first sentence of 31 CFR 5.30 in the temporary regulations states that the regulations "apply to the collection of debt owed to the United States arising from transactions with the Department." This statement may give the erroneous impression that the regulations apply only if the debt was incurred only through a transaction with the Department. In fact, the regulations apply, to the extent stated in 31 CFR 5.37(c) and the remaining regulations, to offsets made by the Department of the Treasury, regardless of the origins of the debt to the United States; and the regulations also apply, to the extent stated in 5 CFR 5.37(b), to offsets made by other agencies at the behest of the Department. The first sentence of 31 CFR 5.30 has therefore been amended to clarify this.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

List of Subjects in 31 CFR Part 5

Administrative offset, Administrative practice and procedure, Claims, Debt collections, Administrative offset.

PART 5—[AMENDED]

Accordingly, for the reasons set out in the preamble, the temporary rule which appeared at 52 FR 51 (January 2, 1987), and which added Subpart D to Part 5 of Title 31, Code of Federal Regulations, is adopted as a final rule with the following change:

Subpart D—Administrative Offset

1. The authority citation for Subpart D of Part 5 continues to read as follows:

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

2. In § 5.30, the first sentence is revised to read as follows:

§ 5.30 [Amended]

These regulations apply to the collection of debts owed to the United States arising from transactions with the Department, or where a request for an offset is received by the Department from another agency. * * *

Date: April 20, 1988.

Jill E. Kent,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 88-10538 Filed 5-10-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay CA Regulation SF-88-03]

Safety Zone Regulations; Closing of Carquinez Strait Anchorage 25

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard established a safety zone in Carquinez Strait, CA. The zone is needed to close existing anchorage 25 and establish alternative anchorages 22 and 23; the zone encompasses the area of these three anchorages. Shoaling has forced the Coast Guard to reposition Carquinez Strait lighted buoy number 25, Coast Guard light list number 6760, to allow greater water depth for deep draft vessels transiting the channel. This action routes transiting deep draft vessels further south into anchorage 25. Being in the outside of a bend in the strait, vessels in anchorage 25 posed extra risks to transiting deep draft vessels even prior to moving buoy 25. Therefore, closing anchorage 25 and creating anchorages 22 and 23 has been the subject of a current rulemaking project. However, this emergency safety zone implements anchorage ground changes immediately due to the extra risk posed by shoaling moving the channel further toward anchorage 25.

EFFECTIVE DATES: This regulation became effective on 27 April 1988. It terminates when the Commander, Eleventh Coast Guard District, issues final regulations.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Steven J. Danielczyk, Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501. Phone 415-437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553 a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels transiting the area.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Steven J. Danielczyk, project officer for the Captain of the Port, and Commander S.E. Burton, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The hazard requiring this regulation resulted from shoaling near the charted position of Carquinez Strait lighted buoy number 25. This shoaling forced the Coast Guard to reposition buoy 25 to position 38°01'59.6" N, 122°09'38.7" W marking the edge of the deeper channel, but encroaching on anchorage 25. Anchorage 25 is located in the outside of a difficult bend in the river with strong currents, frequent high winds and seasonal fog. Vessels anchoring within anchorage 25 pose extra risk to passing deep draft traffic, especially since shoaling has moved the deep channel south into the anchorage. Therefore the Captain of the Port prohibits any vessel to anchor in anchorage 25 and creates two new anchorages to serve vessels in this area. The new anchorages numbered 22 and 23 are located nearby, just north of the established channel; they will not adversely affect transiting deep draft vessels.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new §165.T1163 is added to read as follows:

§ 165.T1163 Safety zone: Carquinez Straits, CA.

(a) *Location.* The following areas are a safety zone:

(1) Anchorage 25 is described in 33 CFR 110.224 with boundaries printed on government charts.

(2) Anchorage 22 is bounded by a line connecting the following coordinates:

Latitude and Longitude		
38°02'36.8" N	122°09'59" W;	to
38°02'06.6" N	122°09'46.7" W;	to
38°01'53.8" N	122°09'00" W;	to
38°02'33.9" N	122°09'00" W;	then back to
38°02'36.8" N	122°09'59" W	

(3) Anchorage 23 is bounded by a line connecting the following coordinates:

Latitude and Longitude	
38°02'33.9" N	122°09'00" W; to
38°01'53.8" N	122°09'00" W; to
38°01'57.4" N	122°08'19.3" W; to
38°02'33" N	122°08'18.6" W; then back to
38°02'33.9" N	122°09'00" W

(b) *Effective date.* This regulation becomes effective on 27 April 1988. It terminates once final regulations eliminating anchorage 25 and permanently establishing anchorages 22 and 23 are released by the Commander of the Eleventh Coast Guard District.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, the Captain of the Port authorizes entry into the areas of this safety zone except that anchoring is limited as follows:

(1) No vessel may anchor in anchorage 25 unless authorized by the Captain of the Port.

(2) Vessels anchoring in the new anchorage 22 shall immediately report their arrival time, position, and departure time to the San Francisco Vessel Traffic Service and comply with the general anchorage regulations in 33 CFR 110.224(a).

(3) Vessels anchoring in the new anchorage 23 shall immediately report their arrival time, position, and departure time to the San Francisco Vessel Traffic Service. Vessels using this anchorage must comply with: the general anchorage regulations in 33 CFR 110.224(a); notes b, c, d, and e of table 110.224(d)(1); and must exceed 15 feet draft, have engines on standby, and a pilot on board.

Dated: April 28, 1988.

David Zawadzki,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 88-10285 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 42

Standards Implementing the Program Fraud Civil Remedies Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is issuing regulations implementing the Program Fraud Civil Remedies Act of 1986 (Pub. L. 99-509) for the VA. As required by the Act, the regulations permit the VA to bring administrative proceedings against persons who knowingly make, present, or submit a false claim or statement against the Agency.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Audley Hendricks, Assistant General Counsel, Office of General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3671.

SUPPLEMENTARY INFORMATION: VA published proposed regulations in the **Federal Register** on May 5, 1987 (52 FR 16409). Interested persons were provided 30 days to offer comments, suggestions, or recommendations.

One set of comments from the Section of Public Contract Law, American Bar Association, was received. The following summarizes those comments and addresses them *in seriatim.*

A. General

1. *Comment:* The commenter found the proposed regulations too detailed and technical in view of Congress' intent that they simply encompass the safeguards afforded by the Administrative Procedure Act (APA). For example, the commenter regarded the filing of post-hearing briefs as unnecessary and wasteful. Believing that the proposed rules would make the proceedings too involved and costly, the commenter suggested that the Agency adopt general guidelines and allow the parties to work out procedures for their individual cases. Alternatively, the Agency was urged to create two sets of procedures, one incorporating the Federal Rules of Civil Procedure, and another less formal set.

Response: The commenter is correct that Congress intended authorities already bound by the Administrative Procedure Act (APA) to conform to its requirements in conducting hearings under the Program Fraud Civil Remedies Act (PFCRA, or the Act) and for authorities not so bound to issue regulations under the Act incorporating the APA requirements (31 U.S.C. 3803(g)). However, Congress required *all* authorities covered by the statute to promulgate rules and regulations implementing the Act (31 U.S.C. 3809), and Congress intended such regulations to "be substantially uniform throughout the government." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). Furthermore, Congress provided that the Administrative Law Judge (ALJ) would send to each person found liable under the Act a description of the procedures that would govern the proceeding (31 U.S.C. 3803(g)(3)(B)(i)).

Congress clearly intended the affected agencies to develop comprehensive procedures for the conduct of hearings under PFCRA through notice and comment rulemaking. It did not envision that each agency would develop general guidelines and leave procedures to be negotiated among the parties and the ALJ in every particular case as suggested by the commenter. Nor is there any indication that Congress intended the agencies to develop two sets of procedures—one for experienced litigants and another for the less sophisticated.

As the APA provides only general guidelines, which cover the broad range of agency adjudications, the implementing regulations make these requirements specific to proceedings under this Act. Moreover, the Act itself imposes a number of detailed procedural measures that go beyond those mandated by the APA, such as provisions for prehearing discovery, the disclosure to the defendant of exculpatory information, limiting the venue of the hearing, internal review by a neutral reviewing official, and appeal of an ALJ's initial decision to the authority head. The regulations must implement these provisions, as well.

First, we disagree with the commenter's premise—that a lack of specificity and detail would make proceedings more expeditious or less costly. To the contrary, an agency's failure to anticipate problems and to establish mechanisms for resolving them in regulations often leads to delays in litigation while solutions are created ad hoc. This delay may be not only costly to litigants, but may also be less fair than informing them in advance of the rules of play.

We disagree that the procedures prescribed in these regulations are too detailed or too technical. We believe that the proposed regulations and those here adopted closely track the prescriptions of the statute and the provisions of the APA, which are only augmented to the extent necessary to fill in gaps left by the statute. For example, the regulations provide a mechanism for the ALJ to enter a default judgment if a defendant fails to respond to the complaint within the time allowed by the statute, an event not anticipated in the text of the Act.

Finally, we think the regulation is sufficiently flexible to permit the ALJ and parties to tailor the process to their needs and the circumstances of each case. For example, prehearing conferences are optional with the parties and may be conducted by telephone (§§ 42.19; 42.18(b)(13)). The parties may agree to submit the case for decision on a stipulated record or on written statements (§ 42.19(c) (4) and

(5)). Contrary to the commenter's remark, post-hearing briefs are optional with the parties unless required by the ALJ (§ 42.36), and if the ALJ should find them unnecessary, the ALJ can dissuade the parties from submitting them.

In sum, we believe that the regulation, which will be sent to all defendants, will give them a clear and comprehensive roadmap of all the procedures.

B. Specific

1. *Comment:* The proposed regulation expands the term "benefit" to include anything of value; whereas, Congress used the term as a subset of "money."

Response: The statute uses the term "benefit" or "benefits" in three different places—in the definition of "claim," in the definition of "statement," and in section 3803(c)(2)(C), where it is defined narrowly to refer to benefits to individuals under specific governmental assistance programs. Only in the definition of "claim" is the term referred to parenthetically as a subclass of "money." No such limitation applies when "benefits" is used in the definition of "statement." In that context, we believe the term as defined in the regulation suits the remedial purposes of the statute.

The Agency dispenses things of value other than money, property, or services—such as loan guarantees and employment. We believe that by providing a remedy against false statements, as well as against false claims, Congress intended the Act to cover material false statements in obtaining these items of value, as well. To make our intention clear, we have amended the definition of "benefit" in § 42.2 to restrict it to application within the context of "statement."

2. *Comment:* The commenter found the proposed definition of "reviewing official" deficient by asserting that it permits redelegation of authority to a designee of the General Counsel, allegedly in violation of section 3801(a)(8) of the Act requiring the authority head to designate the reviewing official. Moreover, it omits the statutory requirement that the reviewing official be serving in a position for which the rate of basic pay is not less than that for grade GS–16.

Response: We disagree with commenter's reading of the statute. It neither explicitly nor implicitly limits the reviewing official designated by the authority head in the regulations from redelegating that authority. Contrast section 3801(a)(8) of the Act with section 3812, which expressly prohibits the Attorney General or Assistant Attorney General designated by the Attorney General from redelegating to others the duties assigned to them by the statute. Especially as the statute provides for the disqualification of a particular reviewing official in a given case, the General Counsel must have the flexibility to reassign responsibility for reviewing such a case to another reviewing official. Of course, as the commenter correctly notes, whoever is designated as a reviewing official in a particular case must serve in a position for which compensation is at grade GS–16 or above. This statutory limitation was inadvertently omitted from the proposed regulations and has been inserted into the definition.

3. *Comment:* The definition of "statement" was questioned because it appears to permit VA to impose civil penalties and assessments under the Act on the basis of a false statement made to a State or intermediary in a program administered by *any* agency of the United States. The commenter suggests the definition be clarified to state that VA's jurisdiction extends only to programs administered by the Agency.

Response: The definition of "statement" is taken directly from section 3801(a)(9) of the Act. We believe that the commenter's concern that VA's jurisdiction under the Act is made impermissibly broad is answered when the definition of "statement" is read in conjunction with section 3801(c)(2) of the Act, which provides that statements are considered *made to the authority* when they are made to an agent, fiscal intermediary, or other entity, including a State or political subdivision thereof, acting for or on behalf of the authority. It is our view that a statement of claim made to a State with respect to an Agency program is also made to the Agency as well.

4. *Comment:* The commenter criticized § 42.3(b)(2) of the proposed regulation for leaving open the possibility that the Agency will seek dual penalties, one based on a false statement and another based on a false certification accompanying it.

Response: The regulation at issue quotes verbatim section 3801(c)(1) of the Act. However, we agree with the commenter that Congress did not intend that an authority could impose penalties against both the false statement and the certification accompanying it, even though the language of the statute and the proposed regulation appear to permit it, and have accordingly clarified the definition.

The statute and regulation broadly define "statement" as "any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made." (See section 3801(a)(9) of the Act; § 42.2 of the regulations.) The statute then clarifies that definition by stating that each written "representation, certification or affirmation" is a separate statement (section 3801(c)(1) of the Act). Because the latter provision is relevant primarily in calculating the number of civil penalties for which a defendant may be liable, we incorporated it into § 42.3 of the regulation, "Basis for civil money penalties and assessments."

The ambiguity arises from the fact that to be actionable under the statute, any of the types of statements defined in section 3801(a)(9) must either contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement (section 3802(a)(2)(C) of the Act). We conclude that Congress intended that where a certification independently asserts a material fact, rather than affirming the truth of facts asserted elsewhere, such certification may be a statement for purposes of section 3802(a)(2) of the Act. On the other hand, where a statement in the form of a representation or a bookkeeping entry, for example, is "accompanied" by a certification as to the truthfulness and accuracy of the representation or entry, the certification is an integral element in making actionable the underlying representation or bookkeeping entry. Hence, only a representation *or* an entry may be counted as a statement subject to liability, not *both* the representation and the accompanying certification.

5. *Comment:* There is no statutory basis for proposed § 42.3(e), which would permit the Agency to hold each person found liable for making a claim or statement in contravention of the statute liable for a civil penalty.

Response: We disagree and have retained § 42.3(e) as proposed. Congress stated in section 6102(b) of the Act that in addition to recompensing agencies for losses they have sustained as a result of false, fictitious, or fraudulent claims and statements, the statute would serve to deter the making of such claims and statements. That deterrent purpose is clearly better served if each person found liable under the statute may be held liable for a civil penalty without regard to contribution by others also liable for the claim or statement. As to the commenter's claim that this proposal is without precendent, we note that this section follows the precedent set in the regulations implementing the first Civil Monetary Penalties Act enacted as part of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97–35, 95 Stat. 789–792 (1981), codified at 42 U.S.C.

1320a–7(c) and § 1320a–7a. *See* 42 CFR 1003.102(c)(1) (1986). Congress used this statute as a model in devising the PFCRA. S. Rep. No. 99–212, 99th Cong., 1st Sess. 3–4, 8–9 (1985).

6. *Comment:* Section 42.4 of the proposed regulations should incorporate the limitations on the investigating official's subpoena authority stated in section 3804(a) of the Act, *viz.*, that a subpoena may be issued only for materials "not otherwise reasonably available to the authority," and only for the purpose of conducting an investigation under the Act.

Response: The statutory limitations are incorporated by reference. However, we disagree that the statute permits the investigation official to issue subpoenas *only* for the purposes of an investigation under the Act. Section 3804(a) of the Act states prefatorily, "For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized" to issue a subpoena. Compare it with section 3804(b) of the Act, which begins, "For the purposes of conducting a hearing under section 3803(f) of this title," in authorizing ALJs to issue subpoenas. At the outset of an investigation into allegations of false claims or statements, an investigating official is not in a position to elect from among all remedies and sanctions available to the Government. Furthermore, an agency's authority to compel the production of documents by subpoena has been given wide scope by the courts if the subpoena serves a legitimate statutory purpose; the agency's inquiry need not be focused on the forecast of a probable outcome. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950); *United States v. Powell*, 379 U.S. 48 (1964).

7. *Comment*: By requiring the person producing subpoenaed documents to make the certifications required by § 42.4(a)(3), the proposed regulation purports to authorize the investigating official to compel testimony, which Congress considered and rejected.

Response: While it is true that Congress ultimately declined to grant the investigating official testimonial subpoena authority, the certifications required by § 42.4(a)(3) of the proposed regulations are auxiliary to the production of documents pursuant to a subpoena *duces tecum*. With some exceptions, a custodian of records can be compelled, either in the administrative hearing or in a civil action to enforce the subpoena, to identify and authenticate the documents produced or to claim that he or she does not have possession of the records sought. *See Curcio v. United States*, 354 U.S. 118 (1957); *McPhaul v. United States*, 364 U.S. 372 (1960); *United States v. O'Henry's Film Works, Inc.*, 598 F.2d 313 (2d Cir. 1979); *United States v. Austin-Bagley Corp.*, 31 F.2d 229, 234 (2d Cir. 1929). Hence, to ensure compliance with the subpoenas *duces tecum* short of resorting to an enforcement proceeding in Federal court in every instance, we have required custodians to attest to their compliance. Likewise, with respect to documents protected by privilege, the regulation provides for the assertion of such privileges in advance of enforcement proceedings. We believe this will help expedite investigations under the Act and will result in fewer expensive trips to the Federal courthouse simply to ensure compliance with the terms of documentary subpoenas.

8. *Comment*: Section 42.4(b) is contrary to section 3803(a)(1) of the Act. The statute states that the investigating official shall report the findings and conclusions of an investigation, while the proposed regulation requires the investigating official to report such findings and conclusions to the reviewing official only if he or she believes an action under the PFCFA to be warranted.

Response: We disagree with the commenter. The language of the statute is not mandatory in the context of section 3803(a)(1), which gives the investigating official discretion to begin an investigation of allegations of liability under PFCRA. By requiring the investigating official to report the findings and conclusions of his or her investigations to the reviewing official, Congress sought to ensure that a case considered meritorious by the investigating official was subjected to "independent prosecutorial review" by an official free from any possible "prosecutorial bias." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). Congress cannot reasonably have intended a highly-paid investigating official to spend time writing, and a highly-paid reviewing official to spend time reviewing, investigation reports on cases that do not warrant further expenditure of the agency's enforcement resources.

Moreover, the decision of the investigating official not to report to the reviewing official on a given case precludes further action under the statute against the person whose claim or statement has been investigated. Thus, there is clearly no harm to his or her interests from the absence of a requirement for findings and conclusions in all cases. We therefore decline to adopt the commenter's reading of the statutory provision.

9. *Comment:* Section 42.4(c) conflicts with the investigating official's responsibility to report his or her findings and conclusions to the reviewing official: Only the Attorney General or a designated Assistant Attorney General can delay a proceeding under PFCRA because it may interfere with a criminal investigation.

Response: We likewise reject the commenter's conclusion here. Section 3803(a)(1) of the Act itself explicitly states that the investigating official's responsibility to report on PFCRA investigations "does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General." Under the Inspector General Act of 1978, the Inspector General, who is VA's investigating official under PFCRA, is obligated to report violations of Federal criminal law expeditiously to the Attorney General (5 U.S.C. App. § 4(d)). Also, by law, the head of an agency has a similar reporting obligation (28 U.S.C. 535(b)). Congress intended that the Inspector General "would be required to contact the Justice Department directly, without clearing the referrals with the agency head, the General Counsel of the agency or any other individual in the agency." S. Rep. No. 95–1071, 95th Cong., 2d Sess. 30 (1978).

Clearly, conduct that could subject a person to liability under the PFCRA also might subject the person to liability under a number of criminal statutes, such as 18 U.S.C. 286, 287, 1001, or 1341. Also, at a particular point in an investigation, it may become clear that an agent of a corporation is personally liable under the PFCRA. However, the investigating official may believe that further investigation would show that the corporation, corporate officers, and perhaps the government contract officer are criminally liable. Premature disclosure to the reviewing official of the agent's liability under PFCRA might jeopardize that ongoing investigation.

Sections 42.4 (c) and (d) of the regulations make it clear that the investigating official is not obliged to report to the reviewing officer under section 3803(a)(1) just because he or she has evidence that a person's conduct may fall within the scope of the PFCRA. As a highly-placed government official, the Inspector General is expected to exercise discretion to balance the competing interests at stake in determining if and when to report findings to the reviewing official.

That the Attorney General or Assistant Attorney General has authority to cause a stay of a hearing

under the Act, as provided in section 3803(b)(3), does not imply that the investigating official *lacks* the authority to prevent interference with similar interests *before* such a hearing has been commenced. Moreover, the intent of the Act is to convey additional flexibility to agencies, not to restrain them in cases where they are victims of a false claim or statement.

10. *Comment:* Section 42.5(c)(6) does not satisfy the statutory requirement that the reviewing official determine that there is a reasonable prospect of collecting from the defendant the amount for which the person may be liable.

Response: We have concluded that the sufficiency of the basis for the reviewing official's statement concerning the financial condition of possible defendants is a matter best left to VA and the Department of Justice. Hence, without agreeing with the commenter's position, we have deleted the final sentence in § 42.5(c)(6).

Section 3809(2) of the Act directs the authority to promulgate regulations requiring the reviewing official to include in his or her notice to the Attorney General a statement that there is a reasonable prospect of collecting the amount for which the person may be held liable. Congress thus sought to ensure that in each case the authority and the Department of Justice would weigh the benefits and costs of pursuing remedies under the Act or others. The reviewing official's statement is obviously intended to assist the authority and the Attorney General in determining how best to deploy their limited enforcement resources, not to confer a right upon potential defendants. This intent is underscored by the fact that a defendant cannot obtain the reviewing official's notice to the Attorney General (section 3803(g)(3)(B)(ii) of the Act). Also, Congress included the requirement that the reviewing official make such a statement in section 3809(2) rather than list it among the criteria related to the merits of a proposed action, which it specified in section 3803(a)(2) of the Act.

Congress recognized that obtaining financial information is a difficult and uncertain process. The Fair Credit Reporting Act, 15 U.S.C. 168lb, the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401–3422, and the Tax Reform Act of 1976, 26 U.S.C. 6103, for example, limit or prohibit easy access to the kinds of records which typically would illuminate the financial circumstances of a potential defendant. Consequently, judgments about collectability are particularly difficult to make, especially before formal proceedings have been commenced.

Under the circumstances, we believe that § 42.5(b)(6) as currently worded satisfies the statutory requirement and properly leaves for the authority and the Department of Justice the determination as to what will constitute sufficient support for the reviewing official's statement.

11. *Comment:* The commenter suggests that the regulation appears to circumvent the $150,000 jurisdictional ceiling on agency adjudications under PFCRA by defining "related" claims under section 3803(c)(1) of the Act too narrowly.

Response: Congress provided in section 3803(c)(1) of the Act that no allegations of liability could be referred to an ALJ if the reviewing official determines that an amount of money, or property or services with a value, of more than $150,000 was requested or demanded in a claim or "in a group of related claims which are submitted at the time such claim is submitted." By imposing the cap, Congress sought to ensure that a group of related false claims submitted together that could result in hundreds of thousands or millions of dollars in penalties should be prosecuted jointly in court, not separately in an administrative proceeding. S. Rep. No. 99–212, 99th Cong., 1st Sess. 24–25 (1985).

Claims must satisfy two statutory requirements if they are to be aggregated for purposes of computing the jurisdictional amount: they must be "related," and they must be "submitted at the same time." Claims submitted at the same time must also be "related." That is, the mere fact that a contractor chooses to "batch" claims under several contracts together for submission to the agency does not make them "related." Also, claims aggregating more than $150,000, but submitted at different times, would not be over the statutory maximum even though they might be related.

Congress gave little clue as to what it meant by "related," but it did remark that claims for progress payments under the *same* contract would be related. S. Rep. No. 99–212, 99th Cong., 1st Sess. 25 (1985). Section 42.6(b) of the regulations thus defines "a related group of claims submitted at the same time" as "claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission." This definition is both reasonable and fully consistent with the language of the statute and the intent of Congress.

12. *Comment:* The commenter took exception to the incorporation of Rule 4(d) of the Federal Rules of Civil Procedure into § 42.8 of the proposed regulation, noting that section 3803(d)(1) specifies that service of a complaint must be by registered or certified mail or by delivery.

Response: The regulation implements the statute by providing that if the complaint is delivered, delivery of the complaint may be made as permitted under Rule 4(d) of the Federal Rules of Civil Procedure.

13. *Comment:* Section 42.9 of the proposed regulation is inconsistent with the statute, in that the former would require a defendant to request a hearing within 30 days of service, whereas the statute measures the 30 days from receipt.

Response: We have modified § 42.8(b) to clarify that service under § 42.8 is complete upon receipt, either through the mail, as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Section 42.9(a), by allowing the defendant 30 days from service (receipt) to request a hearing, is fully consonant with section 3803(d)(2) of the Act.

14. *Comment:* The commenter does not believe that the statute permits the Agency to require an answer and recommended deleting § 42.9.

Response: We disagree. The statute provides that a person receiving a notice of allegations of liability (section 3803(d)(1) of the Act) may get a hearing before an ALJ if such person requests a hearing within 30 days of receipt. Congress conceived of the notice of allegations of liability as a "complaint" (S. Rep. No. 99–212, 99th Cong., 1st Sess. 14 (1985)), and we have adopted that concept in these regulations (*See* §§ 42.7 and 42.8). Consistent with that approach, we have denominated a defendant's request for a hearing as an "answer" and have specified that the defendant shall admit or deny the allegations in the complaint and shall state any defenses on which the defendant intends to rely. This requirement will expedite the proceeding by focusing the issues for the parties and the ALJ, as well as giving the ALJ important information about the complexity of the case that will be helpful to the ALJ in scheduling a hearing, as the ALJ is required to do by statute and § 42.12 upon receiving the answer.

To the objection that the defendant has only 30 days to respond, it should be noted that persons are required to

answer a summons and complaint within 20 days under Fed. R. Civ. P. 12(a). However, we have amended the regulation to provide that a defendant may file within 30 days of receipt of the complaint a request for hearing and a request for an additional 30 days to file a complete answer in accordance with § 42.9. Cf. 42 CFR 1003.109(b) (1986).

15. *Comment:* It is recommended that we delete § 42.10 of the proposed regulation allowing for the entry of an order of default upon failure to answer because the statute does not expressly provide for it.

Response: Although the statute does not expressly provide for default upon a defendant's failure to request a hearing, this regulation is necessary to implement the Act. *See* section 3809 of the Act. Were there no such provision, a defendant's failure or refusal to answer the complaint alone would in itself prevent agencies from exercising powers Congress intended agencies to have for the administrative adjudication of false claims and statements (Pub. L. 99–509, Sec. 6102(b)).

16. *Comment:* The commenter challenged proposed § 42.18(c) as an unauthorized limitation on an ALJ's inherent powers.

Response: Section 42.18(c) has been revised slightly to state that "the ALJ does not have the authority to find Federal statutes or regulations invalid." This proposition follows from the fact that administrative agencies themselves have no jurisdiction to pass upon the constitutionality of legislative or administrative action. *See,* e.g., *Motor and Equipment Manufacturer's Ass'n., Inc. v. EPA,* 627 F.2d 1095, 1114–15 (D.C. Cir. 1979), *cert. denied,* 446 U.S. 952 (1980); *Spiegel v. FTC,* 540 F.2d 287, 294 (7th Cir. 1976); *Finnerty v. Cowen,* 508 F.2d 979, 982 (2d Cir. 1974). *See also Buckeye Industries, Inc. v. Secretary of Labor,* 587 F.2d 231, *reh'g denied,* 591 F.2d 1343 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act it is called upon to administer."). *Cf. Public Utilities Commission v. United States,* 355 U.S. 534, 539–40 (1958). The ALJ making an initial decision on behalf of the authority head obviously has no greater authority than the authority head to declare Federal statutes and regulations invalid, and the regulation simply articulates that principle.

Moreover, "[o]n matters of law and policy," the ALJ is "entirely subject to the agency." *Association of Administrative Law Judges v. Heckler,* 594 F. Supp. 1132, 1141 (D.D.C. 1984). *See also* Scalia, *The ALJ Fiasco—A Reprise,* 47 U. Chi. L. Rev. 57, 62 (1980). As the agency is given rulemaking authority under 5 U.S.C. 553 and many substantive statutes, the ALJ is powerless to usurp that authority by declaring duly promulgated regulations invalid. The ALJ's role is interpretation not legislation.

17. *Comment:* The Agency is obligated to disclose to the defendant any exculpatory evidence contained in the reviewing official's report to the Attorney General, contrary to proposed § 42.20(c).

Response: Section 3803(g)(3)(B)(ii) of the Act directly prohibits the disclosure of the reviewing official's report, and § 42.20(c) implements that provision. However, the reviewing official is to include exculpatory circumstances in his or her report to the Attorney General (§ 42.5(b)(5)), and the Agency is obligated to disclose exculpatory information in the possession of the investigating or reviewing official. Hence, the information that goes into the notice may be disclosed to the defendant although the notice itself is not disclosed.

18. *Comment:* Section 42.31 of the proposed regulations would create a presumption that the maximum amount of the penalties and assessments should be imposed. The commenter noted that the statute vested broad discretion in the ALJ to determine the appropriate amount of penalties and assessments and recommended that the last sentence of proposed § 42.31 be deleted as inappropriate.

Response: The commenter is correct in noting that the ALJ and the authority head on appeal have broad discretion under the statute in fixing the amount of penalties and assessments. Without agreeing that the last sentence of § 42.31 is inappropriate, we have deleted it.

19. *Comment:* Section 42.32 of the proposed regulation fails to create a presumption that the hearing would be held where the defendent resides.

Response: The proposed regulation tracks the statute. Section 3803(g)(4) of the Act specifies three alternative sites for the hearing: (1) Where the defendant resides or transacts business; (2) where the claim or statement was made; or (3) in some place agreed upon by the defendant and the ALJ. It does not create a presumptive venue, nor should it. That determination is best left to the ALJ and the parties framing the case.

20. *Comment:* Considering the gravity of allegations of false claims or statements and the amounts at stake, evidence generally should be limited to what is admissible in court. In particular, § 42.34 should be revised to exclude hearsay evidence or at least to create a presumption against the admission of hearsay.

Response: We decline to accept the commenter's suggestions. First, it is well-established that technical rules of evidence—such as the Federal Rules of Evidence—do not apply in an administrative proceeding absent a regulation expressly making them applicable. *See* 5 U.S.C. 556(d); *Richardson v. Perales,* 402 U.S. 389 (1971). That Congress chose to provide for the adjudication of allegations of false claims and statements against the Government in an administrative forum under the APA strongly suggests that Congress also intended the less restrictive evidentiary standards of the APA to apply. The very advantages of expediency and lower cost that Congress sought by providing this administrative remedy would be lost if the Federal Rules of Evidence and the Federal Rules of Civil Procedure were imported into it from the judicial context. Moreover, the reasons for the more rigorous exclusionary rules of the Federal Rules of Evidence, such as those against hearsay, do not obtain where no jury can be misled. *See,* e.g., 3 K.C. Davis, *Administrative Law Treatise,* § 16.4 (2d ed. 1980); *An Approach to Rules of Evidence for Nonjury Cases,* 50 A.B.A.J. 723 (1964); Davis, *Hearsay in Administrative Proceedings,* 32 Geo. Wash. L. Rev. 689 (1964); Gellhorn, *Rules of Evidence and Official Notice in Formal Administrative Hearings,* 1971 Duke L.J. 1.

Instead, the provisions of §§ 42.34 (a) through (d) are based on Recommendation 86–2 of the Administrative Conference of the United States, 1 CFR 305.86–2, published at 51 FR 25642 (July 16, 1986). They provide that an ALJ shall exclude evidence that is irrelevant and immaterial and may exclude relevant evidence that is unreliable or if its probative value is substantially outweighed by other factors, such as an unfair prejudice or the undue consumption of time.

With respect to a defendant's right to confront adverse witnesses, § 42.33(b) provides that an ALJ may permit testimony to be admitted in the form of a written statement or deposition. If the ALJ chooses to allow such testimony, the party seeking to introduce it must provide it to all other parties with the declarant's last known address in a manner which affords other parties sufficient time to subpoena the witness for cross-examination at the hearing. This satisfies due process. *Richardson V. Perales, supra.*

21. *Comment:* The commenter objects that § 42.38 of the proposed regulations

conflicts with section 3803(i)(1) of the Act, which provides that the decision of an ALJ is final unless it is appealed by the defendant.

Response: We do not believe that § 42.38 conflicts with the statute. By providing for reconsideration of the initial decision, the regulation allows for the expeditious resolution of errors of law and fact by the trier of fact, who can most expeditiously resolve these matters, perhaps without resort to an appeal to the authority head.

An ALJ's decision becomes the final decision of the Agency unless it is appealed within 30 days by a person determined to be liable for penalties and assessments. This is a departure from adjudications under the APA. Under 5 U.S.C. 557(b), an ALJ makes an initial or recommended decision, while the agency retains full authority to make a *de novo* determination as to issues of law and fact on the record either on appeal or by review on its own motion. The agency thus can ensure consistency in its decisions and adherence to agency policy—including uniform interpretations of the statutes it administers and its own regulations. Moreover, where novel issues of law arise in the context of adjudications, the agency may articulate its policy in the first instance, subject, of course, to judicial review.

It is difficult to conceive that Congress intended to eliminate the authority's prerogative of speaking the final word on statutes and regulations within its purview. Without a process of reconsideration, the agency would be powerless even to seek, let alone make, corrections of misstatements of law and fact in ALJ decisions unless a defendant were found liable and chose to appeal. We do not believe Congress intended to sacrifice uniformity and consistency in decisions under this Act and other substantive statutes that will be subject to interpretation in adjudications thereunder. Hence, we have provided an opportunity for both parties to seek reconsideration of the ALJ's initial decision as necessary for the effective implementation of this statute.

22. *Comment:* The commenter argued that § 42.39 of the proposed regulation eliminated for 25 days a defendant's right to appeal to the authority head, as provided in section 3803(i)(2)(A) of the Act. The commenter also took exception to the requirement that the defendant must file a legal brief on appeal specifying exceptions, stating that a brief letter ought to suffice in some cases.

Response: With regard to the first comment, we have amended § 42.39(b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 42.38, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration.

With regard to the second concern, insofar as Congress provided that an ALJ's decision would stand as the authority's own, absent an appeal by the defendant, Congress clearly did not intend for the authority to rout through the decision in search of error or to redetermine all issues *de novo* without any guidance from the aggrieved party. The Agency's discretion to limit its consideration on appeal to specific exceptions pointing out error is both well-established and of obvious practical value. *See Marshall Field & Co. v. National Labor Relations Board,* 318 U.S. 253, 255 (1943); *National Labor Relations Board v. Cheney California Lumber Co.,* 327 U.S. 385, 387–88 (1946). The Attorney General's Committee on Administrative Procedure long ago urged agencies to insist upon "meaningful content and exactness in [an] appeal from the [ALJ's] decision * * *" and to cease from shouldering "the burden of complete reexamination. Review of the [ALJ's] decision should in general and in the absence of clear error be limited to grounds specified in the appeal." *Administrative Procedure in Government Agencies,* S. Doc. No. 8, 77th Cong., 1st Sess. 52 (1941) (Final Report of the Attorney General's Committee on Administrative Procedure). We agree.

23. *Comment:* Section 42.43 should be revised to reflect the fact that investigating and reviewing officials may not make collections under section 3806 of the Act, as provided in section 3809(1) of the Act.

Response: This limitation is already contained in § 42.14, pertaining to separation of functions.

24. *Comment:* Section 42.44 should be revised to indicate that only a final decision imposing penalties or assessments may constitute the basis for an administrative offset under section 3807 of the Act.

Response: Section 42.44 of the regulation reiterates the statutory language. A final decision is defined in §§ 42.10 (d) and (l), 41.37(d), 42.38(g), and 42.39(l).

In addition to the comments from the American Bar Association Section, the Departments of Health and Human Services and Education received comments on their proposed regulations on the definition of "Person" (*i.e.* those liable for violations under the Act). The commenter challenged the inclusion of States and their political subdivisions in that definition. We agree with the commenter and have amended our regulations to exclude States and their political subdivisions from the definition in § 42.2, thus reiterating the definition in section 3801(a)(6) of the Act.

In addition, a number of minor, technical changes to the proposed regulations were made pursuant to comments received from within the Agency. Based on internal comments, § 42.1(b) was amended to clarify that the only administrative procedures and actions for imposing penalties and assessments for violations of the PFCRA are contained in the proposed new Part 42 to Title 38, Code of Federal Regulations. Section 42.3(c) is also amended to clarify that the exemption from liability for violations of the Act to certain persons receiving specified VA benefits does not extend to a fiduciary for the beneficiary.

The final regulations address the requirements of the Program Fraud Civil Remedies Act, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874. Basically, this law permits agencies to bring administrative proceedings against persons who knowingly make, present, or submit a false claim or statement against the agency. From the false claimant, an agency may recover up to twice the amount falsely claimed and impose a civil penalty of up to $5,000 for each separate false statement. Any penalty or assessment may be collected by the Attorney General through the filing of a civil action, or by offsetting from the penalty or assessment amounts, other than tax refunds, owed the particular party by the Government, including VA benefits. All recoveries would be deposited in the United States Treasury.

These final regulations are based on model regulations drafted by a committee composed of representatives of nine major agencies and chaired by the Department of Health and Human Services at the request of the President's Council on Integrity and Efficiency. The chairman of the Council urged that all agencies required to promulgate regulations adopt the model regulations. (VA employed the model regulations in drafting its version to be contained in 38 CFR Part 42.)

In accord with the Act's requirements, these final regulations prescribe the following procedures for VA when it receives allegations of a false claim:

(a) Investigation by the VA Inspector General, who will report the findings and conclusions to the reviewing official

if an action under the Act may be warranted;

(b) Review of the investigation by a reviewing official from the Office of the VA General Counsel to determine whether the evidence supports a belief of potential liability;

(c) Referral by the reviewing official to the Department of Justice. If the Attorney General approves, the reviewing official will notify the person of the allegations and of the right to a hearing. The reviewing official can compromise or settle any case up until the time a decision is rendered by a hearing examiner;

(d) A hearing, if requested, administered by an examiner who is an Administrative Law Judge (ALJ), with all the due process protections under the Administrative Procedure Act. The ALJ would also determine liability and the amount of the penalty and assessment;

(e) If found liable, an appeal to the Agency head and then the United States District Court.

While the Act generally permits VA to take action against anyone who makes a false claim or statement to the Agency, such as contractors, employees, veterans' guardians, loan appraisers, and private insurers and hospitals, the remedies under this law may *not* be asserted for overpayment frauds against individual recipients of specified benefits, such as VA pension, compensation, or health-care benefits. But, actions could still be brought against individuals for fraud involving their *basic* eligibility to receive these benefits.

The Administrator hereby certifies that the final regulations 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. Based on investigations and other past experience, VA anticipates that less than a significant number of false claims or statements, as defined in these regulations, would be submitted or made to the Agency by small entities. In addition, these regulations simply address administrative proceedings to be used by VA in complying with the requirements of the Program Fraud Civil Remedies Act. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

These final regulations have also been reviewed under E.O. 12291, Federal Regulation, and have been determined to be non-major because they would not increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 42

False claims, False statements, Fraud, Veterans.

Approved: April 20, 1988.

Thomas K. Turnage,

Administrator.

38 CFR is amended by adding Part 42, Standards Implementing the Program Fraud Civil Remedies Act, to read as follows:

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

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Authority: Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, to be codified at 31 U.S.C. 3801–3812.

§ 42.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. Section 3809 of title 31, United States Code, requires each authority head, such as the Administrator of Veterans Affairs, to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part:

(1) Establishes and provides the only administrative procedures and actions for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 42.2 Definitions.

For the purposes of this part, the following definitions apply:

"Administrator" means the Administrator of Veterans Affairs.

"ALJ" means an Administrative Law Judge in the Veterans Administration pursuant to 5 U.S.C. 3105 or detailed to the Veterans Administration pursuant to 5 U.S.C. 3344.

"Benefit" means, in the context of statement, anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

"Claim" means any request, demand, or submission—

(a) Made to the Veterans Administration for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Veterans Administration or to a party to a contract with the Veterans Administration—

(1) For property or services if the United States—

(i) Provided the property or services;

(ii) Provided any portion of the funds for the purchase of the property or services; or

(iii) Will reimburse the recipient or party for the purchase of the property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse the recipient or party for any portion of the money paid on the request or demand; or

(iii) Made to the Veterans Administration which has the effect of decreasing an obligation to pay or account for property, services, or money.

"Complaint" means the administrative complaint served by the reviewing official on the defendant under § 42.7 of this part.

"Defendant" means any person alleged in a complaint under § 42.7 of this part to be liable for a civil penalty or assessment under § 42.3 of this part.

"Government" means the United States Government.

"Individual" means a natural person.

"Initial Decision" means the written decision of the ALJ required by § 42.10 or § 42.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

"Investigating official" means the Inspector General of the Veterans Administration or an officer or employee of the Office of the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

"Knows or has reason to know" means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

"Makes", wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

"Person" means any individual, partnership, corporation, association or private organization and includes the plural of that term.

"Representative" means any person designated by a party in writing.

"Reviewing official" means the General Counsel of the Veterans Administration or designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organization unit of the Veterans Administration in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

"Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the Veterans Administration, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under the contract or for the grant, loan, or benefit.

§ 42.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making the statement has a duty to include the material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Veterans Administration, or to a recipient or party when such claim is actually made to an agency, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Veterans Administration, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of the claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages by the Government because of the claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement, except that a certification or affirmation of the truthfulness and accuracy of the contents of a statement is not a separate statement.

(3) A statement shall be considered made to the Veterans Administration when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Veterans Administration.

(c) *Applications for certain benefits.* (1) In the case of any claim or statement made by an individual relating to any of the benefits listed in paragraph (c)(2) of this section received by the individual, the individual may be held liable for penalties and assessments under this section only if such claim or statement is made by the individual in making application for such benefits with

respect to any element required to establish the individual's initial eligibility to receive or continue to receive the benefits.

(2) For purposes of paragraph (c) of this section, the term "benefits" means benefits under chapters 11, 13, 15, 17, and 21 of title 38 which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(3) For purposes of this paragraph, the term "application" shall include, but is not limited to, any report or statement made or submitted by or for applicant or recipient of a benefit under chapters 11, 13, or 15 of title 38, United States Code, to establish eligibility or to remain eligible for the benefit.

(4) This paragraph is not applicable to an individual receiving benefits in a fiduciary capacity in behalf of an individual eligible for any of the benefits listed in paragraph (c)(2) of this section.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each person making the claim or statement may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made a payment (including transferred property or provided services), an assessment may be imposed against any of these persons or jointly and severally against any combination of these persons.

§ 42.4 Investigation.

(a) All allegations of liability under § 42.3 shall be promptly referred to the investigating official.

(b) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that the documents are not available and the reasons therefor, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(d) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(e) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 42.5 Review by the reviewing official.

(a) The report of the investigating official will be examined by the reviewing official to determine if there is adequate evidence to believe a person is liable under § 42.3 of this part. The review will be completed within 90 days.

(b) If, based on the report of the investigating official under § 42.4(b) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 42.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 42.7 of this part.

(c) The notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 42.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(d) If the reviewing official finds that there is not adequate evidence that a person is liable, the reviewing official will inform the department or office of the Veterans Administration concerned with the claim or statement and the investigating official.

§ 42.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 42.7 of this part only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 42.3 of this part with respect to a claim, the reviewing official determines that, with respect to the claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services, or both, demanded or requested in violation of § 42.3(a) of this part does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 42.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 42.8 of this part.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from the claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 42.10 of this part.

(c) The reviewing official shall serve the defendant with a copy of these regulations at the same time as service of the complaint.

§ 42.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 42.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 42.11 of this part. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 42.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 42.9(a) of this part, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 42.8 of this part, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 42.3 of this part, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before the initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if the decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 42.38 of this part.

(h) The defendant may appeal to the Administrator the decision denying a motion to reopen by filing a notice of appeal with the Administrator within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Administrator decides the issue.

(i) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(j) The Administrator shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Administrator decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Administrator shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Administrator decides that the defendant's failure to file a timely answer is not excused, the Administrator shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 42.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 42.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) The notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and the defendant, if any; and

(6) Other matters the ALJ deems appropriate.

§ 42.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Veterans Administration.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 42.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Veterans Administration who takes part in investigating, preparing, or presenting a particular case may not, in the case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Veterans Administration, including in the offices of either the investigating official or the reviewing official.

§ 42.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 42.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. The motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) The affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of the facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of the motion and affidavit, the ALJ shall proceed no further in the case until the ALJ resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Administrator may determine the matter only as part of the review of the initial decision upon appeal, if any.

§ 42.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issue at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 42.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conference to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at deposition or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise any other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find invalid Federal statutes or regulations.

§ 42.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Other matters that may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 42.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 42.4(b) of this part are based, unless the documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of the documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory

information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 42.5 of this part is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provision of this section. The motion may only be filed with the ALJ following the filing of an answer pursuant to § 42.9 of this part.

§ 42.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 42.22 and 42.23 of this part, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. The motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 42.24 of this part.

(3) The ALJ may grant a motion for discovery only if the ALJ finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 42.24 of this part.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 42.8 of this part.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 42.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 42.33(b) of this part. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 42.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. The request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit the witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 42.8 of this part. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 42.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation,

proceeding, or other administrative investigation only be disclosed in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 42.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witnesses subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Veterans Administration, a check for witness fees and mileage need not accompany the subpoena.

§ 42.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g. motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 42.8 of this part shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon the representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 42.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the date following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 42.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any part may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 42.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with the request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 42.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 42.3 of this part and, if so, the appropriate amount of any civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Veterans Administration shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 42.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Administrator of Veterans Affairs, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating the conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Administrator or Veterans Affairs in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious,

or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which the claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of the programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the miscounduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying or prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

§ 42.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) Any place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at a place and time orderd by the ALJ.

§ 42.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 42.22(a) of this part.

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of the direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 42.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 42.24 of this part.

§ 42.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcription of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Administrator of Veterans Affairs.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 42.24 of this part.

§ 42.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing the briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated

record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 42.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 42.3 of this part;

(2) If the person is liable for penalties or assessments, the appropriate amount of the penalties or assessments considering any mitigating or aggravating factors that the ALJ finds in the case, such as those described in § 42.31 of this part.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator. If the ALJ fails to meet the deadline contained in this paragraph, the ALJ shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Administrator, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 42.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the mailing in the absence of contrary proof.

(b) Every motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion shall be accompanied by a supporting brief.

(c) Responses to the motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Administrator in accordance with § 42.39 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Administrator in accordance with § 42.39 of this part.

§ 42.39 Appeal to the Administrator of Veterans Affairs.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal the decision to the Administrator of Veterans Affairs by filing a notice of appeal with the Administrator in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 42.8 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Administrator may extend the initial 30 day period for an additional 30 days if the defendant files with the Administrator a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Administrator, and the time for filing motions for reconsideration under § 42.38 of this part has expired, the ALJ shall forward the record of the proceeding to the Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Administrator that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present the evidence at the hearing, the Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Administrator shall promptly serve each party to the appeal with a copy of the decision of the Administrator and a statement describing the right of any person to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under § 42.3 of this part is final and is not subject to judicial review.

§ 42.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or Assistant Attorney General designated by the Attorney General transmits to the Administrator a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to the claim or statement, the Administrator shall stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 42.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Administrator.

(b) No administrative stay is available following a final decision of the Administrator.

§ 42.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Administrator imposing penalties or assessments under this part and specifies the procedures for the review.

§ 42.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorizes actions for collection of civil penalties and assessments imposed under this part and specify the procedures for the action.

§ 42.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 42.42 or § 42.43 of this part, or any amount agreed upon in a compromise or settlement under § 42.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 42.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(b).

§ 42.46 Compromise and settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 42.42 of this part or during the pendency of any action to collect penalties and assessments under § 42.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 42.42 of this part, or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 42.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 42.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 42.10(b) of this part shall be deemed a notice of hearing of purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 88–10356 Filed 5–10–88; 8:45am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3431/R958; FRL 3376–6]

Pesticide Tolerance for Methyl-3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-YL)amino]carbonyl]amino]sulfonyl]-2-Thiophenecarboxylate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-2-thiophene-carboxylate in or on the raw agricultural commodities (RACs) wheat and barley grain at 0.05 part per million (ppm) and wheat and barley straw at 0.1 ppm. This regulation was requested by E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: May 11, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 8, 1986 (51 FR 86063), which announced that E.I. du Pont de Nemours & Co., Inc., Walkers Mill Building, Barley Mill Plaza, Wilmington, DE 19898, had filed PP 6F3431 proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl] amino]sulfonyl]-2-thiophenecarboxylate in or on the RACs barley grain and wheat grain at 0.05 ppm.

In the **Federal Register** of March 9, 1988 (53 FR 7570), EPA issued a notice that announced that PP 6F3431 had been amended to include establishment of tolerances on wheat and barley straw at 0.1 ppm.

No comments were received in response to these notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies, a 90-day feeding study with rats fed dosages of 0, 5, 125, and 375 milligrams/kilograms/day (mg/kg/day) with a no-observable-effect level (NOEL) of 5 mg/kg/day; a 13-week feeding study with dogs fed dosages of 0, 1.875, 37.5, and 187.5 mg./kg/day with a NOEL of 37.5 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 3.75, 112.5, and 1,125 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 1, 125 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 3.75 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 1.25, 25, and 125 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 125 mg/kg/day (HDT) and a systemic NOEL of 1.25 mg/kg/day; a 1-year feeding study with dogs fed dose levels of 0, 1.25, 18.75, and 187.5 mg/kg/day with a NOEL of 18.75 mg/kg/day; a two-generation reproduction study with rats fed dosages of 0, 1.25, 25, and 125 mg/kg/day with no reproductive effects observed at 125 mg/kg/day (HDT) and a NOEL of 125 mg/kg/day (HDT); a teratology study in rabbits fed dosages of 0, 30, 158, and 511 mg/kg/day with no teratogenic effects occurring at 511 mg/kg/day and a maternal NOEL of 158 mg/kg/day; a teratology study in rats fed dosages of 0, 30, 159, and 725 mg/kg/day with a teratogenic NOEL of 159 mg/kg, a fetotoxic NOEL of 159 mg/kg/day, and a maternal NOEL greater then 725 mg/kg/day (HDT); and mutagenic studies including a reverse mutation assay (not mutagenic in *Salmonella typhimurium* strains with and without activation),

gene mutation (no increase in mutation frequency seen at HDT of 7 mM, the limit of solubility), and DNA synthesis/rat hepatocytes *in vitro* (material did not induce significant increase in unscheduled synthesis [UDS] in primary cultures).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.25 mg/kg/day and using a hundredfold safety factor) is calculated to be 0.013 mg/kg/day. The theoretical maximum residue contribution for these tolerances is calculated to be 0.000073 mg/kg body weight/day, which occupies approximately 0.6 percent of the ADI. There are no published tolerances for this chemical.

No desirable data are lacking.

The pesticide is useful for the purposes of this tolerance rule. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology, high-pressure liquid chromatography with HPLC and TLC, is available for enforcement purposes. Becuase of the long lead-time from establishing this tolerance to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: RM. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There are currently no actions pending against the registration of the chemical. There are no expectations of residue occurring in meat, milk, poultry, and eggs from these tolerances.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M Street SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950). (Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346(a)(d)(2)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Date: April 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346(a).

2. By adding new § 180.439, to read as follows:

§ 180.439 Methyl-3-[[[[(4-methoxy-6-methyl-1, 3, 5-triazin-2-yl) amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate; Tolerances for Residues.

Tolerances are established for residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1, 3, 5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley, grain	0.05
Barley, straw	0.1
Wheat, grain	0.05
Wheat, straw	0.1

[FR Doc. 88–10216 Filed 5–10–88; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

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 Stabilization and Conservation Service

7 CFR Part 725

Farm Marketing Quotas, Acreage Allotments; Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule and request for comments.

SUMMARY: This proposed rule would amend the regulations found at 7 CFR Part 725 effective for the 1988 and subsequent crops of flue-cured tobacco. These changes are necessary to implement provisions of the Agricultural Reconciliation Act of 1987, as included in the Omnibus Budget Reconciliation Act of 1987, with respect to: (1) The lease and transfer of tobacco marketing quotas from a farm that has suffered a loss as the result of a natural disaster condition; and (2) the periodic adjustment of yield factors for acreage and poundage quotas.

DATE: Comments must be received on or before June 10, 1988, in order to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Written comments must be received by June 10, 1988, to be assured consideration. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382-0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA's procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

Discussion of Proposed Changes

Section 316 of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), prohibited the lease and transfer before planting of acreage allotment and marketing quota which were established for the 1987 and subsequent crops of flue-cured tobacco. The Agricultural Reconciliation Act of 1987, as included in the Omnibus Budget Reconciliation Act of 1987 (the "1987 Act"), amended section 316 of the 1938 Act to allow the lease and transfer of flue-cured tobacco quota under certain disaster conditions. This proposed rule would amend the regulations at 7 CFR Part 725 to implement the provisions of the 1987 Act which amended Section 316 of the 1938 Act to authorize, with respect to the 1988 and subsequent years' crops of flue-cured tobacco, the lease and transfer after June 30 of the flue-cured tobacco marketing quota which is assigned to a farm if: (1) The planted acreage is equal to or greater than 90 percent of the farm's acreage allotment, or the planted acreage is determined to be sufficient to produce a quantity of tobacco equal to the farm marketing quota under average conditions; and (2) the farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a natural disaster. Any such lease and transfer of a flue-cured tobacco marketing quota could be made to any other farm within the same State where the transferring farm is located. The quantity of a flue-cured tobacco marketing quota which could be leased or transferred under this proposed rule would be limited to an amount which is required to market the current year's crop of flue-cured tobacco on the receiving farm.

This proposed rule would amend also the regulations at 7 CFR Part 725 to implement the provisions of the 1987 Act which amended section 317 of the 1938 Act to eliminate the periodic adjustment of preliminary acreage allotments and preliminary farm yields.

List of Subjects in 7 CFR Part 725

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

PART 725—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 725 be amended as follows:

1. The authority citation for Part 725 continues to read as follows:

Authority: Secs. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended. 96 Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

2. Section 725.56 is amended by revising paragraph (b) to read as follows:

§ 725.56 Determination of preliminary farm acreage allotments.

* * * * *

(b) *Preliminary farm acreage allotment.* The preliminary farm acreage allotment shall be the same as the farm acreage allotment established for the preceding year.

3. Section 725.57 is amended by revising paragraph (a)(1) to read as follows:

§ 725.57 Determination of preliminary farm yields.

(a) * * *

(1) *Farm having preliminary farm acreage allotment.* The preliminary farm yield established for the farm shall be the same preliminary farm yield as was in effect for the preceding year.

* * * * *

4. Section 725.72 is amended by: Revising paragraph (a); by removing paragraphs (d) (1) and (2) and redesignating paragraphs (d) (3), (4), (5), and (6) as paragraphs (d) (1), (2), (3), and (4), respectively; by revising newly redesignated paragraphs (d) (1) and (2); by revising paragraph (e)(4)(i); by removing and reserving paragraphs (f), (g), (l), (n), and (o); and by deleting the last sentence in paragraph (q) to read as follows:

§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.

(a) *General.* Effective for the 1983 and subsequent crop years a flue-cured tobacco marketing quota, including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter, may be transferred between farms by sale. A flue-cured tobacco marketing quota transfer by sale must be within the same county. For the 1988 and subsequent crop years, a flue-cured tobacco marketing quota also may be transferred after June 30 by lease to a farm in any county within the same State when the county committee determines that:

(1) The lessor has planted at least 90 percent of the farm's effective acreage allotment, or

(2) The planted acreage is determined to be sufficient to produce the effective farm marketing quota under average conditions, and

(3) The farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator. Only the lessor and lessee (or any attorney, trustee, bank, or other agent who regularly represents either the lessor or lessee in business transaction unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for, a transfer of flue-cured tobacco marketing quota by lease.

* * * * *

(d) *Transfer provisions*—(1) *Lessor farm.* A transfer of quota from a farm by lease shall not be approved:

(i) *New farm.* If the farm is a new farm.

(ii) *Natural disaster.* Unless the county committee in the county in which the farm is located from administrative purposes determines that the:

(A)(1) Farm has planted an acreage equal to or more than 90 percent of the effective farm acreage allotment, or (2) Planted acreage is sufficient to produce the effective farm marketing quota under average conditions;

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota;

(C) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(D) Farm's expected production of flue-cured tobacco is less than 80 percent of the farm's effective marketing quota as a result of a drought, excessive rain, hail, wind, tornado, or other natural disaster as determined by the Deputy Administrator.

(iii) *Claim for tobacco marketing quota penalty.* If a claim has been filed against the lessor for a tobacco marketing quota penalty and the claim remains unpaid unless the claim is paid or the entire proceeds of the lease of the allotment and quota are applied against the claim and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(2) *Lessee farm.* A transfer of quota to a farm by lease shall not be approved:

(i) *Price support eligibility.* Unless the producers on the farm qualify for price support under the provisions of Part 1464 of this title; and

(ii) *Limitation.* If the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

* * * * *

(e) * * *

(4) * * *

(i) *Lease.* November 15.

* * * * *

Signed in Washington, DC on April 26, 1988.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-10563 Filed 5-10-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-35-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to McDonnell Douglas DC-9-30 series airplanes, which currently requires structural inspections and repair or replacement, as necessary, to assure continued airworthiness. This action would expand the applicability of that AD to include certain DC-9-10, -20, -40, and -50 series airplanes. This proposal is prompted by a structural reevaluation which has identified certain principal structural elements likely to develop fatigue cracks, as these airplanes approach and exceed the manufacturer's original design life estimates. Fatigue cracks in these areas, if not detected and corrected, could compromise the structural integrity of these airplanes.

DATE: Comments must be received no later than July 1, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach California 90846, Attention: Director, Publications and Training, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in the light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerns with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request the FAA, Northwest Mountain Region, Office of Regional Counsel, (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 19, 1987, FAA issued AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1987), applicable to McDonnell Douglas Model DC-9-30 series airplanes, to require structural inspections, and repair or replacement, as necessary, of the Principal Structural Elements (PSE) listed in McDonnell Douglas Report Number L26-008, DC-9 Supplemental Inspection Document (SID).

Since issuance of AD 87-14-07, DC-9 operators, FAA Engineers, and Flight Standards Inspectors, together with McDonnell Douglas, have participated in revising the original Supplemental Inspection Document to include the Model DC-9-10, -20, -40, and -50 series airplanes.

In order to evaluate the impact of increased fatigue cracks with respect to maintaining the fail-safe design and damage tolerance of the Model DC-9-10, -20, -40, and -50 airplane structure, the manufacturer conducted a structural reassessment of their airplanes using modern damage tolerance evaluation techniques. The criteria for this reassessment is contained in FAA Advisory Circular AC 91-56, dated May 6, 1981, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," and Federal Aviation Regulations (FAR) 25.571 (Amendment 25-45).

In developing the SID, a working group reviewed the existing DC-9-30 SID program with respect to the structural differences in airplane model, and the basic requirements of AD-14-07. As a result, the DC-9 SID (L26-008), Volumes I, II, and III, were revised to include those inspection considerations and methods associated with the DC-9-10, -20 -40, or -50 series airplanes.

It is estimated that 136 additional airplanes of U.S. registry and 14 U.S. operators would be affected by this AD, that it would take approximately 1,000 manhours to incorporate the Supplemental Inspection program for a typical operator. The average labor charge is considered to be $40 per manhour. Based on these figures, the total cost impact on U.S. operators to incorporate the SID program is estimated to be $560,000.

The recurring inspection impact on the affected operator is estimated to be 341 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be approximately $1,855,040.

Based on the above figures, the total cost impact of this AD revision is estimated to be approximately $2,415,040 for the first year, and $1,855,040 per year thereafter.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, it any, Model DC-9 series airplanes are operated by small entities.

A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows: Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the applicability statement and paragraph A. of AD 87-14-07, Amendment 39-5630 (52 FR 25589; July 8, 1987), to read as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 2 of Volume I (All Series) of McDonnell Douglas Report No. L26-008, R1, DC-9 Supplemental Inspection Document (SID), dated November 1987, or later FAA-approved revisions, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III-87 of the SID.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced before further flight in accordance with a FAA-approved method.

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

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

The FAA has requested **Federal Register** approval to incorporate by reference the manufacturer's Supplemental Inspection Document

identified and described in this directive.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on April 28, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-10407 Filed 5-10-88; 8:45 am]

BILLING 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-162-AD]

Airworthiness Directives; Canadair Model CL-44D4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Canadair Model CL-44D4 series airplanes, which currently requires inspection of the left and right main landing gear bogie beam for cracks, and replacement, if necessary. This proposal would require that different techniques be used to perform this inspection. This action is prompted by reports that the inspection technique required by the existing AD has proven to be unsatisfactory in detecting cracks before failure occurs. Cracking in the bogie beam, if not detected and corrected, could result in a gear failure during landing or takeoff.

DATES: Comments must be received no later than June 28, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The Applicable service information may be obtained from Canadair, Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Birkenholz, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rule Docket No. 87-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 68-01-06, Amendment 39-537 (33 FR 257; January 9, 1968), to require borescope inspections of the main landing gear bogie beam, as described in Canadair Service Information Circular (SIC) 341-CL44D4. That AD was prompted by reports of cracking in the main landing gear bogie beam. This condition, if not corrected, could lead to loss of the airframe as a result of a gear failure during landing or takeoff.

Since issuance of that AD, the FAA has received reports that the inspection techniques required by AD 68-01-06 have proven to be unsatisfactory in service, in that such inspections have not detected cracking of the beam before failure occurs.

Additionally, examination of failed parts has revealed that the failures originate under the steel axle bushings. The manufacturer has eliminated the shrink fit of the bushings on the latest configuration of this airplane model, in order to facilitate a more complete and thorough inspection. When the latest configuration of the bogie beam on this model of airplane is fitted, the borehole used for the borescope inspection no longer exists, making the presently-required inspection impossible to perform.

Canadair has issued Service Bulletin 493-CL44, dated February 29, 1988, which describes new procedures for visual and dye penetrant inspections to detect cracking in the main landing gear bogie beam, and replacement, if necessary.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the U.S., an AD is proposed which would revise AD 68-01-08 to require inspections of the main landing gear bogie beam, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,840.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291

and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 68–01–06, Amendment 39–537 (33 FR 257; January 9, 1968), as follows:

Canadair: Applies to all Model CL–44D4 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear during landing or takeoff due to cracks in the main landing gear bogie beam, accomplish the following:

A. Within the next 20 landings after the effective date of this AD, and thereafter at intervals not to exceed 20 landings, perform a visual inspection of the left and right main landing gear bogie beam, P/N 44–87574, for cracks, in accordance with paragraph 2.A.(1) of Canadair Service Bulletin 493–CL44, dated February 29, 1988.

B. At intervals not to exceed 500 landings or 12 months, whichever occurs first, perform the inspection and modification, if necessary, in accordance with paragraphs 2.A.(2), 2.A.(3), 2.A.(4) and 2.A.(5) of Canadair Service Bulletin 493–CL44, dated February 29, 1988.

C. Any structure found to be cracked as a result of the inspections required by paragraph A. or B., above, must be replaced, prior to further flight, with an airworthy part or an FAA-approved equivalent part.

1. Replacement parts must be inspected prior to installation, in accordance with paragraph 2.A.(3) of Canadair Service Bulletin 493–CL44, dated February 29, 1988.

2. Replacement parts must be repetitively inspected in accordance with paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

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

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Canadair, Ltd., Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on April 25, 1988.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 88–10408 Filed 5–10–88; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9205]

Occidental Petroleum Corp. et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Tenneco Inc., a Houston, TX. corporation, that manufactures and sells polyvinyl chloride (PVC), reacquire a PVC plant in Burlington, N.J., if a divestiture is ordered by the Commission. The consent order would require Tenneco to reacquire the plant "in a manner that is consistent with the purposes of the Commission's final order against Occidental," the acquiring company.

DATE: Comments must be received on or before July 11, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S–3302, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Polyvinyl chloride resin, Thermoplastic, Trade practices.

Agreement Containing Consent Order

In the Matter of Occidental Petroleum Corp., a corporation, Occidental Chemical Corp., a corporation, Tenneco, Inc., a corporation and Tenneco Polymers, Inc., a corporation.

The Agreement herein, by and between the corporations Tenneco Inc. and Tenneco Polymers, Inc. (hereinafter referred to collectively as "Tenneco"), by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission (the "Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondents Tenneco Inc. and Tenneco Polymers, Inc. are corporations organized under the laws of Delaware with principal offices at 1010 Milam, Houston, Texas, 77001.

2. The Commission has issued and served upon Occidental Petroleum Corporation, Occidental Chemical Corporation (hereinafter referred to collectively as "Occidental"), and Tenneco a complaint charging them with violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Tenneco has filed an answer to the complaint denying said charges.

3. Tenneco admits all jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Tenneco waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record of this proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days for the receipt and consideration of comments or views from any interested person and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Tenneco, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding with respect to respondent Tenneco.

6. This agreement is for settlement purposes only and does not constitute an admission by Tenneco that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to Tenneco, (1) issue its decision containing the following order in disposition of the proceeding with respect to respondent Tenneco, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Tenneco's address as stated in this agreement shall constitute service. Tenneco waives any right it might have to any other manner of service. The Complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in this agreement may be used to vary or to contradict the terms of the order.

8. Tenneco has read the complaint and the order contemplated hereby. Tenneco understands that once the order has been issued, Tenneco will be required to file one or more compliance reports showing that it has fully complied with the order. Tenneco further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

Definitions

For purposes of this Order the following definitions shall apply:

A. "Tenneco" means Tenneco Inc. and Tenneco Polymers, Inc., two corporations organized under the laws of Delaware with their principal places of business in Houston, Texas, and their directors, officers, agents, and employees, and their subsidiaries, divisions, affiliates, successors, and assigns;

B. "Occidental" means Occidental Petroleum Corporation and Occidental Chemical Corporation, two corporations organized under the laws of California with their principal places of business in Los Angeles, California, and their directors, officers, agents, and employees, and their subsidiaries, divisions, affiliates successors, and assigns:

C. "PVC" means any vinyl chloride homopolymer with the repeating unit $CH_2=CHCl$, and any copolymer of vinyl chloride with varying amounts of other chemicals, inlcuding vinyl acetate, ethylene, propylene, vingylidene chloride, or acrylates;

D. "Suspension PVC copolymer" means any copolymer of vinyl chloride and vinyl acetate, that is produced by the suspension process and contains over 50 percent by weight vinyl chloride;

E. "Dispersion PVC" means PVC produced by the emulsion or dispersion process.

II.

It is ordered that, in the event any divestiture order is entered by the Commission against Occidental in this proceeding, Tenneco shall consent to the assignment by Occidental, in a manner that has received the prior approval of the Federal Trade Commission and on conditions (other than consideration paid by Occidental to Tenneco) identical to those imposed on Occidental in the Sale Agreement, to the successor(s) or acquirer(s) of any PVC assets or business divested by Occidental pursuant to that Order, of all benefits, rights and privileges extended to Occidental under the terms of the Sale Agreement and attached exhibits (including, but not limited to the option rights, if any then exist, under § 9.05 of that agreement), except for the option described in Exhibit V of the Sale Agreement which shall not be assigned.

III.

It is further ordered that Tenneco shall take no action that interferes with the accomplishment of any relief ordered by the Commission in this proceeding. Tenneco shall cooperate in the transfer to a third party of any PVC assets or business divested by Occidental pursuant to an order of the Commission.

IV.

Tenneco acknowledges that the final Order of the Federal Trade Commission against Occidental in this proceeding may prohibit Occidental from exercising the option granted in Exhibit V of the Sale Agreement or may provide that Tenneco's reacquisition of the Burlington, New Jersey, PVC plant from Occidental pursuant to Exhibit V of the Sale Agreement shall only be made in a manner that has received the prior approval of the Commission. Any reacquisition by Tenneco of the Burlington, New Jersey, PVC plant from Occidental pursuant to Exhibt V of the Sale Agreement shall only be made in a manner that is consistent with the purposes of the Commission's final Order against Occidental in this proceeding.

V.

It is further ordered that for a period of ten years following the date of this Order, for the purposes of determining compliance with this Order, upon written request of the Federal Trade Commission or the Director or any Assistant Director of the Bureau of Competition of the Federal Trade Commission made to Tenneco at its principal offices and subject to any legally recognized privilege, Tenneco shall permit duly authorized representatives of the Federal Trade Commission or of the Bureau of Competition:

A. Reasonable access during the office hours of Tenneco, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports and other records and document in Tenneco's possession or control that relate to any matter contained in this Order; and

B. An opportunity, subject to the reasonable convenience of Tenneco, to interview officers or employees of Tenneco, who may have counsel present, regarding such matters.

VI.

It is further ordered that, while Paragraph V of this Order is effective, Tenneco shall notify the Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligation arising out of this Order.

VII.

It is further ordered that, within sixty (60) days after service upon Tenneco of the Commission's final Order against Occidental in this proceeding, Tenneco shall file with the Commission a written report setting forth in detail the manner and form in which Tenneco has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has provisionally accepted an agreement containing a proposed consent order with Tenneco Inc. and its wholly-owned subsidiary, Tenneco Polymers, Inc., (collectively, "Tenneco"), in partial settlement of a Complaint challenging the acquisition of the polyvinyl chloride ("PVC")[1] assets and business of Tenneco by Occidental Petroleum Corporation through its wholly-owned subsidiary, Occidental Chemical Corporation (collectively, "Occidental"). The Commission's Complaint against Occidental is still pending and is currently in adjudication in an administrative proceeding.

The proposed consent order with Tenneco has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint, which was issued on April 11, 1986, challenges the acquisition and the acquisition agreement between Occidental and Tenneco as violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that, at the time of the acquisition, Occidental and Tenneco were substantial, direct competitors in three concentrated, United States markets: mass and suspension PVC resin, suspension PVC copolymer resin, and dispersion PVC resin. The Complaint also alleges that entry into each of the relevant markets is difficult. The Complaint further alleges that the acquisition and acquisition agreement have the effect of eliminating actual competition between Occidental and Tenneco in each of the relevant markets; eliminating Tenneco as a significant competitor in each of the relevant markets; significantly increasing the levels of concentration in each of the relevant markets; significantly enhancing the likelihood of collusion or interdependent coordination among the remaining firms in each of the relevant markets; and significantly enhancing the likelihood of dominant firm behavior to increase price in the suspension PVC copolymer resin market.

The proposed consent order with Tenneco, accepted subject to final approval, preserves the Commission's remedial options with respect to the ongoing administrative proceeding. The proposed consent order provides that, in the event a divestiture order is entered by the Commission against Occidental in this proceeding, Tenneco shall consent to the assignment by Occidental, to the acquirer(s) of any PVC assets or business divested by Occidental pursuant to that order, in a manner that has received the prior approval of the Federal Trade Commission, of all benefits, rights, and privileges extended to Occidental under the terms of the sale agreement, with certain exclusions; that Tenneco will cooperate in the transfer of any PVC assets or business divested by Occidental to a third party pursuant to Commission order, and will take no action that interferes with any Commission-ordered relief; that the final order of the Commission against Occidental may prohibit Occidental from exercising an option granted under the acquisition agreement to compel Tenneco to repurchase Tenneco's former Burlington, New Jersey, PVC facility, or may require that any reacquisition by Tenneco of the Burlington, New Jersey, PVC facility be made only in a manner that has received the Commission's prior approval; and that any reacquisition by Tenneco of the Burlington, New Jersey, PVC plant shall only be made in a manner that is consistent with the purposes of the Commission's final order against Occidental.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the Complaint or the agreement containing the proposed consent order, or to modify their terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 88–10534 Filed 5–10–88; 8:45 am]

BILLING CODE 6750-01-M

[1] PVC resin is a "thermoplastic" material, i.e., a type of plastic that becomes soft and malleable when heated.

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16 CFR Part 13

[File No. 861–0004]

Robert E. Harvey, M.D., P.A., d.b.a. Victoria Allergy and Asthma Clinic; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Victoria, Tx. allergists from impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center or other health facility in order to restrict competition from physicians who are not allergists.

DATE: Comments must be received on or before July 11, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. and Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA. 94103. (415) 995–5220.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Allergists, Physicians, Trade practices.

Agreement Containing Consent Order To Cease and Desist

In the matter of Robert E. Harvey, M.D., P.A., doing business as Victoria Allergy and Asthma Clinic; Robert E. Harvey, M.D., and individual; and Gullapali K. Rao, M.D., an individual.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Robert E. Harvey, M.D., P.A., a professional association doing business as Victoria Allergy and Asthma Clinic, and Robert E. Harvey, M.D., and Gullapali K. Rao, M.D., individuals ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, by their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Robert E. Harvey, M.D., P.A., is a professional association, existing and doing business under the laws of the State of Texas as Victoria Allergy and Asthma Clinic. Proposed respondents Robert E. Harvey, M.D. and Gullapali K. Rao, M.D. are physicians licensed and doing business under the laws of the state of Texas. Proposed respondents' principal place of business is located at 3901 North Navarro, Victoria, Texas 77901.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint attached may be sued in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that for purposes of this Order, the following definitions apply:

A. "Respondents" means Robert E. Harvey, M.D., a professional association doing business as Victoria Allergy and Asthma Clinic, and Robert E. Harvey, M.D. and Gullapali K. Rao, M.D., individually or under any other name or names, and their representatives, agents and employees.

B. "Allergy testing product" means any product or device that has been approved by the Food and Drug Administration of the United States Department of Health and Human Services ("FDA") for the use in the diagnosis or treatment or allergic disease in human patients. This definition includes but is not limited to, products or devices used for *in vitro* allergy tests, as hereinafter defined.

C. "*In vitro* allergy test" means any test, approved by the FDA, that is conducted on blood or blood serum samples to diagnose or treat allergic disease. This definition includes, but is not limited to, tests that are known by the trade names "Radio-allergosorbent tests," "Multiple Antigen Simultaneous tests," "Fluoroallergosorbent tests," and "Immunoperoxidase tests."

II.

It is ordered that respondents, their successors and assigns shall cease and desist from, directly or through any devices, entering into, threatening or attempting to enter into, organizing, continuing or participating in any agreement or combination to refuse or threaten to refuse to deal with, or otherwise coerce, any person or entity for the purpose or with the effect of impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center or other health care facility. This includes but is not limited to any agreement or combination to refuse or threaten to refuse to deal with any manufacturer or distributor of any allergy testing product because that manfuacturer of distributor offers to sell or sells allergy testing products to any physician who is not certified or eligible for certification by the American Board of Allergists, or to any clinic, hospital, ambulatory care center or other health care facility.

Provided that nothing in this order shall prohibit a respondent from entering into any agreement with any physician with whom that respondent practices medicine in partnership or as a professional corporation or association, or who is employed by the same person as that respondent or whom that respondent employs.

III.

It is further ordered that respondents shall:

A. Within thirty (30) days after this Order becomes final, mail a copy of this Order and of the Complaint in this proceeding to each and every physician or facility to whom respondents sent correspondence referred to in Paragraphs 13(a), 13(b), and 13(d) of the Commission's complaint in this matter.

B. Within sixty (60) days after this Order becomes final, and at such other times as the Commission may by written notice to respondents require, file or cause to be filed with the Office of the Secretary of the Commission, Washington, DC 20580, or such other office as the Commission shall designate in writing, a verified written report setting forth in detail the manner and form in which they have complied with this Order.

IV.

It is further order that the respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affilitiation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondents shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondents are newly engaged as well as a description of respondents' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

Analysis of Proposed Consent Order to Aid Public Comment: Robert E. Harvey, M.D., doing business as Victoria Allergy and Asthma Clinic, and Robert E. Harvey, M.D. and Gullapali K. Rao, M.D., Individuals

The Federal Trade Commission has accepted an agreement to a proposed consent order from Robert E. Harvey, M.D., ("Harvey"), individually and doing business as Victoria Allergy and Asthma Clinic ("Victoria Allergy"), and Gullapali K. Rao, M.D. ("Rao").

The Commission has placed the proposed consent order on the public record for sixty (60) days to obtain comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that Victoria Allergy, Harvey, and Rao have conbined or conspired with physicians in the State of Texas who specialize in the diagnosis and treatment of allergic disease ("allergists") to restrict competition from non-allergist physicians. The alleged purpose and effect of the conspiracy was to coerce and boycott two manufacturers of allergy testing systems to induce these manufacturers to discontinue their sales of the testing systems to non-allergist physicians.

According to the complaint, both allergists and some physicians who are not allergists compete in the diagnosis and treatment of allergic disease. The complaint asserts that certain diagnostic testing methods, known as *in vitro* allergy tests, have been developed that permit non-allergist physicians to compete more easily with allergists. Prior to the development of *in vitro* allergy tests, the complaint alleges, allergists largely competed only among themselves; after the development of these tests, allergists began to face substantial competition from non-allergist physicians.

According to the complaint, Drs. Harvey and Rao sent letters to all or nearly all allergists in the State of Texas in April, 1984, urging them to "join forces" against the marketing of *in vitro* allergy tests to non-allergist physicians. In particular, the complaint alleges, their letters urged these allergists not to deal with Pharmacia Diagnostics, a diversified manufacturer of medical diagnostic products, because that company had marketed its *in vitro* allergy tests to non-allergist physicians. The complaint also alleges that Drs. Harvey and Rao wrote to allergists in the State of Texas again in April, 1985, urging them to take concerted action to deter another manufacturer of *in vitro* allergy tests, MAST Immunosystems, Inc., from marketing its products to non-allergist physicians. The complaint alleges that some allergists in Texas joined Drs. Harvey and Rao in attempting to coerce Pharmacia Diagnostics and MAST Immunosystems to stop selling allergy tests to non-allergist physicians.

The complaint alleges that the actions of Dr. Harvey, Dr. Rao, and other allergists has several anticompetitive effects. First, by limiting the ability of non-allergists to obtain materials necessary to diagnose allergies, the conspiracy restricted the ability of patients to choose among a variety of alternative health care providers on the basis of price, service, quality, and other factors. Second, the conspiracy limited the ability of non-allergist physicians, hospitals, clinics, and ambulatory care centers to compete with allergists. Third, the conspiracy hindered the development of competitive, convenient, cost-effective and innovative forms of allergy testing.

The Proposed Consent Order

The proposed order is intended to eliminate the effects of the alleged boycotts. It prohibits Dr. Harvey and Dr. Rao from entering into, or participating in any joint action with the purpose or effect of impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center, or other health care facility. The order specifically prohibits Dr. Harvey and Dr. Rao from engaging in any joint action to refuse to deal with any manufacturer or distributor of any allergy testing products because that manufacturer or distributor markets its products to non-allergist physicians. The order does not prohibit Dr. Harvey or Dr. Rao from entering into agreements with physicians with whom they practice in a partnership, or physicians they employ, or by whom they are employed.

The order requires Drs. Harvey and Rao to send a copy of the Order and Complaint in this matter to every physician and health care facility to whom they had sent their letters concerning Pharmacia Diagnostics and MAST Immunosystems, Inc. Mailing of the Order and Complaint to the recipients of the alleged solicitation to refuse to deal is expected to provide notice to those physicians that collective action to restrict the ability of non-allergist competitors to compete may constitute a violation of law.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 88–10535 Filed 5–10–88; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

Reconsideration of Interpretation of Exportation for Purpose of Foreign Trade Zones Act; Extension of Time for Comments

AGENCY: Customs Service, Treasury.

ACTION: Extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning Customs interpretation of the meaning of "exportation" for purposes of the Foreign Trade Zones Act. A notice inviting the public to comment on Customs reconsideration of its interpretation of "exportation" was published in the **Federal Register** on March 4, 1988 (53 FR 6996), and comments were to have been received on or before May 3, 1988. Customs has received several requests to extend the period of time for comments. The requesters state additional time is required to prepare reasonably responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended 45 days.

DATE: Comments are requested on or before June 17, 1988.

ADDRESS: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch (202–566–5856).

Dated: May 6, 1988.

Edward F. Kwas,

Acting Commissioner of Customs.

[FR Doc. 88–10608 Filed 5–10–88; 8:45 am]

BILLING CODE 9109–17–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 20–88]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Immigration and Naturalization Service (INS), proposes to identify as a separate system of records its "Centralized Index," currently identified in 28 CFR 16.99 as "Subsystem (3)" of its Immigration and Naturalization Service Index System, JUSTICE/INS–001 (hereinafter referred to as the 001 system). INS is naming the new system "The Immigration and Naturalization Service Alien File (A–File) and Central Index System (CIS), JUSTICE/INS–001A" (hereinafter referred to as the 001A system), and is promulgating this rule to exempt it from certain Privacy Act provisions; conversely, it is removing certain exemptions from the 001 system.

Specifically, the 001A system will be exempted from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act, 5 U.S.C. 552a. Information in the system relates to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, material which has been properly classified pursuant to Executive Order, the privacy of third parties, and the identities of confidential sources involved in such investigations. Exemptions from subsections (e)(4)(I), (f) and (h) for the 001 system will be removed because INS complies with the requirements thereof.

DATES: All comments must be received by June 10, 1988.

ADDRESS: Address any comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, 202 272–6474.

SUPPLEMENTARY INFORMATION: In the Notices section of today's **Federal Register** INS proposes to alter and identify as a separate system of records Subsystem E. of the 001 system. Subsystem E. is identified in 28 CFR 16.99 as "Subsystem (3)." The reestablishment of the subsystem as a new and separate system (the 001A system) and the promulgation of this rule are the first steps of a major INS effort to revise and ultimately eliminate the 001 system as it is now described. The remaining subsystems of 001 are being reviewed to determine how they too can be most accurately described and reported. (The 001 system was published in its entirety in the **Federal Register** on October 31, 1984 (49 FR 43812).)

In the process of extracting and redescribing the subsystem, INS determined that exemption from subsections (e)(4)(I), (f) and (h) are unnecessary for both the 001 and 001A systems because INS does comply with the requirements thereof. Accordingly, these exemptions will be removed from the 001 system. INS is complying with subsection (e)(4)(I) by providing the information relating to its record source categories in its **Federal Register** notice published October 31, 1984. Similarly, INS is in compliance with subsection (f) by virtue of the Department's published regulations in 28 CFR Part 16. INS complies with subsection (h) by allowing persons described by subsection (h) to act on behalf of the individual as required by the subsection. Where appropriate, access to the records is protected by virtue of the system's exemption from subsection (d); i.e., records not available to the individual covered by the system, likewise, would not be available to persons acting on that individual's behalf under subsection (h). For these reasons, the removal of these exemptions has no real effect on the public.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend Title 28 of the Code of Federal Regulations as set forth below.

Dated: April 26, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR 16.99 by revising paragraph (a), by removing paragraphs (b)(8), (11) and (13), by redesignating paragraphs (b) (9), (10), (12) and (14) as paragraphs (b)(8), (b)(9), (b)(10) and (b)(11) respectively, and by revising the newly redesignated paragraph (b)(11).

§ 16.99 Exemption of Immigration and Naturalization Service Systems—Limited access.

(a) The following systems of records of the Immigration and Naturalization Service are exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g):

(1) The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001A.

(2) The Immigration and Naturalization Service Index System, JUSTICE/INS–001 which consists of the following subsystems:

(i) Agency Information Control Record Index.
(ii) Alien Enemy Index.
(iii) Congressional Mail Unit Index.
(iv) Air Detail Office Index.
(v) Anti-smuggling Index (general).
(vi) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.
(vii) Border Patrol Sectors General Index System.
(viii) Contact Index.
(ix) Criminal, Immoral, Narcotic, Racketeer and Subversive Indexes.
(x) Enforcement Correspondence Control Index System.
(xi) Document Vendors and Alterers Index.
(xii) Informant Index.
(xiii) Suspect Third Party Index.
(xiv) Examination Correspondence Control Index.
(xv) Extension Training Enrollee Index.
(xvi) Intelligence Index.
(xvii) Naturalization and Citizenship Indexes.
(xviii) Personnel Investigations Unit Indexes.
(xix) Service Look-Out Subsystem.
(xx) White House and Attorney General Correspondence Control Index.
(xxi) Fraudulent Document Center Index.
(xxii) Emergency Reassignment Index.
(xxiii) Alien Documentation, Identification, and Telecommunication (ADIT) System.

The exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) * * *

(11) In addition, these systems of records are exempt from subsections (c)(3),(d), (e)(1), (e)(4) (G) and (H) to the extent they are subject to exemption pursuant to 5 U.S.C. 552a(k)(1). To permit access to records classified pursuant to Executive Order would violate the Executive Order protecting classified information.

* * * * *

[FR Doc. 88–10396 Filed 5–10–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917 and 1918

[Docket No. H–004J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: This notice extends the public comment period in the current rulemaking on the OSHA lead standard. This rulemaking concerns the feasibility of meeting the permissible exposure limit specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work practice controls in nine remand industry sectors.

DATE: Written comments must be received by May 23, 1988.

ADDRESSES: Comments should be mailed or delivered in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–004J, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–523–7894. All materials submitted will be available for public inspection and copying from 8:15 a.m. to 4:15 p.m., Monday through Friday at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–523–8148.

SUPPLEMENTARY INFORMATION:

I. Background and Judicial History

On November 14, 1978, OSHA promulgated the lead standard (29 CFR 1910.1025), which, in part, limited occupational exposure to airborne concentrations of lead to 50 micrograms per cubic meter of air ($\mu g/m^3$), based on an 8-hour, time-weighted average (TWA) (43 FR 52952 and 43 FR 54354, November 21, 1978). On August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit upheld the validity of the lead standard in most respects. However, it remanded the record to OSHA for reconsideration of the question of the technological and economic feasibility of implementing the permissible exposure limit (PEL) exclusively by means of engineering and work practice controls for 38 industry sectors. *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), cert. denied, 453 U.S. 913 (1981).

OSHA is now in the process of completing a rulemaking to determine feasibility for the last nine lead industry sectors. The Agency has already held public hearings and received post hearing comments in this proceeding. On April 7, 1988, OSHA reopened the record until May 9, 1988 to receive comments on a final set of documents OSHA placed into the docket. The documents primarily consist of plant site visit reports, related exposure data, and updates of feasibility assessments on each of the nine industry sectors performed by OSHA's contractor, Meridian Research, Inc.

The Agency is currently under order of the United States Court of Appeals for the District of Columbia Circuit to make its determinations of feasibility for the nine remand industries and to return the record to the court by July 15, 1988. (A fuller explanation of the background and legal history surrounding this proceeding and the lead standard can be found at 53 FR 11511, April 7, 1988; and 52 FR 28727, August 3, 1987).

II. Request for Extension of the Comment Period

On April 27, 1988 the American Cast Metals Association (ACMA) requested an extension of the comment period for at least 60 days beyond the current May 9 deadline. Basically two reasons for the request were given. First, several important and complex documents were not entered into the docket by OSHA until April 19 and April 21, 1988. Second, the time between those dates and the May 9 date for the close of the comment period is insufficient to allow industry to make meaningful comments. This

request for an extension was supported by a number of other trade associations in allied sectors, including the Association of Brass and Bronze Ingot Manufacturers, which also sent a supporting letter. In addition, and for essentially the same reasons, the Lead Industries Association, Inc. (LIA) by letter of April 29, 1988 also requested an extension of the comment period, in this case for approximately four weeks.

III. OSHA Grants Extension

OSHA regrets the delay in entering the documents referred to into the record. The Agency agrees that industries' opportunity to comment should not be adversely affected because of that delay. By this notice OSHA is extending the comment period to May 23, 1988. This will provide the several industries involved more than 30 days from the insertion of these documents into the record to submit their comments. The Agency believes that 30 days is reasonable under all the circumstances. First, for each of the relevant industries only one or two documents were belatedly placed in the record. Industry already has been granted sufficient time to comment on other documents in the record. Second, OSHA is operating under a court-imposed deadline to make its feasibility determinations and return the rulemaking record to the court by July 15, 1988. If OSHA extended the comment period substantially beyond May 23, 1988, it would preclude compliance with the July 15 deadline.

Therefore OSHA hereby extends the closing date for the public comment period in this proceeding from May 9 to May 23, 1988.

IV. Public Comment Procedures

Writtern comments must be received by May 23, 1988. Comments should be mailed or delivered in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–004J, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone 202–523–7894. All materials submitted will be available for public inspection and copying from 8:15 a.m. to 4:15 p.m., Monday through Friday at the above address.

V. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for the Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Signed at Washington, DC, this 6th day of May 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–10519 Filed 5–10–88; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3378–7]

Approval and Promulgation of Implementation Plans; Disapproval of Three Architectural Coatings Rules in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to disapprove three volatile organic compound (VOC) control rules which were submitted by the California Air Resources Board (CARB) as revisions to the California State Implementation Plan (SIP). The rules concern architectural coatings requirements in Placer County, Sutter County, and the South Coast Air Quality Management District and were submitted to EPA on February 10, 1986 and November 12, 1985. EPA is proposing to disapprove the rules because they are unjustified relaxations from existing SIP requirements in nonattainment areas. The rules are inconsistent with the Clean Air Act (CAA), 40 CFR Part 51 and EPA policy. Public comment is invited on today's proposed action.

DATE: Comments will be considered by EPA if they are submitted on or before June 27, 1988.

ADDRESSES: Send any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105. ATTN: State Implementation Plan Section (A–2–3), Air Management Division.

Copies of the submitted rules and EPA's evaluation of the submittal are available at the above address for public inspection during normal business hours.

Copies of the submitted rules are also available at the following locations:

General Projects Section, Technical Support Division, California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812

Placer County Air Pollution Control District, 11484 B Avenue, Auburn, CA 95603

Sutter County Air Pollution Control District, 142 Garden Way, Yuba City, CA 95991

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, State Implementation Plan Section (A–2–3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7639; (FTS) 454–7639.

SUPPLEMENTARY INFORMATION:

Background

CARB submitted the following rules for the control of VOC emissions on the dates indicated:

November 12, 1985.

South Coast Air Quality Management District

Rule 1113—Architectural Coatings

February 10, 1986.

Placer County Air Pollution Control District

Rule 218—Architectural Coatings

Sutter County Air Pollution Control District

Rule 3.15—Architectural Coatings

EPA Evaluation

EPA has evaluated the revised architectural coatings rules for consistency with the Clean Air Act, 40 CFR Part 51 and EPA policy. EPA has also evaluated them to determine whether they weaken or strengthen the existing federally approved SIP.

Revised South Coast Rule 1113 (1) extends the final limit compliance date for non-flat, non-specialty coatings to September 2, 1989, (2) adds interim VOC content limits for certain types of industrial maintenance primers and topcoats, and (3) effects labeling requirements for industrial maintenance coatings on January 1, 1986. Overall, and individually, the revisions to Rule 1113 represents a significant relaxation of the existing SIP in an area which cannot attain the NAAQS by December 31, 1987. EPA proposes to disapprove the rule because it is inconsistent with the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

Revised Placer County Rule 218 and revised Sutter County Rule 3.15 have been revised and restructured to (1) establish interim and final VOC content limits for a number of specialty coatings,

and (2) extend the final limit compliance date for non-flat, non-specialty coatings to September 1, 1989. Overall and individually, the revisions to Placer Rule 218 and Sutter Rule 3.15 represent significant relaxations of the existing SIP. They cannot be approved because they are inconsistent with the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

Copies of EPA's detailed evaluations, including policy memoranda, are available for public inspection at EPA's San Francisco office.

EPA Requirements

EPA's requirements governing proposed SIP revisions are contained in the Clean Air Act, section 110 and Part D, 40 CFR Part 51 and various EPA policy memoranda.

Sections 110(a)(2)(A) and 172(a)(1) of the CAA, 40 CFR Part 51.10, and EPA policy require that SIPs provide for the attainment of the National Ambient Air Quality Standards (NAAQS) "as expeditiously as practicable." Section 110(a)(2)(B) of the CAA, 40 CFR Parts 51.12 and 51.13, and EPA policy require that SIPs also insure maintenance of the NAAQS. Section 110(a)(3(A) of the CAA and 40 CFR Part 51.6 extend the SIP requirements in section 110 and 40 CFR Part 51 to SIP revisions.

EPA cannot approve a SIP or SIP revisions without a demonstration that the SIP or SIP revisions is adequate to attain and maintain the standards. EPA's policy is that the burden of proof is on the State to provide an adequate demonstration. If the state fails to provide an adequate demonstration, EPA must disapprove the submission for failure to satify the requirements of the Act.

Section 172 of the Clean Air Act requires states to adopt regulations which reflect reasonably available control technology (RACT) at a minimum in order to attain and maintain the NAAQS. Although the EPA approved rules may require controls more stringent than RACT, these controls are necessary for the attainment and maintenance of the ozone standard. The revised rules would allow increased emissions in areas which have not demonstrated attainment of the ozone standard. EPA is therefore proposing to disapprove the revisions because they fail to satisfy the requirements of section 172 of the Act.

In this case, the State of California has failed to demonstrate that the submitted architectural coatings SIP revisions will provide for attainment and maintenance of the NAAQS as expeditiously as practicable. The State has also not demonstrated that it would be unreasonable to continue to impose the existing SIP limits.

EPA has evidence which indicates that at least forty companies have certified compliance with the limits for non-flat, non-specialty coatings which these revisions would relax. In an additional survey, fourteen out of fifteen companies indicated having a compliant oil-based coating. Therefore, both water-based and oil-based coatings are available which meet the limits currently in the SIP.

EPA will continue to accept additional information regarding quality, price, and performance of the non-flat architectural coatings affected by this rule.

EPA Action

Under section 110 and Part D of the CAA, EPA is proposing to disapprove as SIP revisions South Coast Rule 1113, Placer County Rule 218 and Sutter County Rule 3.15 because they weaken the existing California SIP. These architectural coatings rules are inconsistent with the Clean Air Act, 40 CFR Part 51, and EPA policy.

Regulatory Process

Today's action imposes no additional requirements on small entities. Therefore, under 5 U.S.C. section 605(b), I certify that today's action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: May 30, 1988

John Wise,

Acting Regional Administrator.

Note.—This document was received by the Office of the Federal Register on May 6, 1988.

[FR Doc. 88–10471 Filed 5–10–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

Certification of Non-Delinquency by Applicants for Federal Financial Assistance

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes a regulation which requires that a certification of non-delinquency be included in applications for Federal financial assistance. This action will implement Paragraph 6 of Office of Management and Budget (OMB) Circular A–129, "Managing Federal Credit Programs."

DATE: Comments must be received on or before July 11, 1988.

ADDRESS: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: William Opdyke, Acting Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, telephone (202) 343–3433.

SUPPLEMENTARY INFORMATION: In a September 29, 1987, memorandum for the Heads of Departments and Agencies, the Deputy Director of OMB directed each agency to take appropriate steps to ensure that those receiving Federal financial assistance were not delinquent on loans or other accounts to the Federal Government. Paragraph 6 of OMB Circular A–129 prohibits award of Federal funds to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. This requirement was to be implemented, in part, by amending application forms for Federal financial assistance to include certification of non-delinquency.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 since it will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory

Flexibility Act (5 U.S.C. 601 et seq.) since the certification requirement does not concern information not normally available to small entities in the ordinary course of business.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* since the type of certification proposed under this rule is not considered as an information collection requirement.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that Title 43 of the Code of Federal Regulations be amended as set forth below.

Date: April 7, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–102; Executive Order 12549 of February 18, 1986; OMB Circular A–110; OMB Circular A–129.

2. Part 12 is amanded by adding a new Subpart E to read as set forth below:

Subpart E—Certification of Non-Delinquency

Sec.

12.100 Purpose.
12.101 Definitions.
12.102 Authority.
12.103 Applicability.
12.104 Policy.
12.105 Procedures.

Subpart E—Certification of Non-Delinquency

§ 12.100 Purpose.

(a) These regulations implement the requirements of paragraph 6 of OMB Circular A–129, "Managing Federal Credit Programs," which provide, "Except where required by law or approved by the head of the agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor."

(b) The requirement in paragraph (a) of this section is implemented by:

(1) Identifying the programs and applicants within the Department of the Interior that are covered by the Circular; and

(2) Prescribing the procedures that the Department of the Interior shall use in requiring a non-deliquency certification to be completed by financial assistance applicants.

§ 12.101 Definitions.

"Cooperative agreement" means an agreement used when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute, and "substantial" involvement is anticipated between the executive agency and the recipient during the contemplated activity.

"Debt" means an amount of money or property that has been determined by an appropriate agency official to be owed to the United States from any person, organization or entity except another Federal agency.

"Direct loan" means (a) disbursement of funds to an individual or non-federal entity that is contracted to be repaid, with or without interest; (b) a purchase of private loans through secondary market operations; (c) an acquisition of guaranteed private loans in satisfaction of default or other loan guarantee claims; (d) a sale of agency assets on credit terms of more than 90 days duration.

"Loan guarantee" means (a) any debt obligation on which the agency pledges to pay part of all of the amount due to a lender or holder in the event of default by the borrower; and (b) a direct Federal loan that an agency sold under a guarantee or agreement to repurchase.

"Loan insurance" means a type of guarantee in which any agency pledges the use of accumulated insurance premiums to secure lenders against default on the part of borrowers. For the purposes of OMB Circular A–129, loan insurance is considered to be a "loan guarantee" and the term "insured loan" is considered to be a "guaranteed loan."

"Grant" means an agreement used when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute.

§ 12.102 Authority.

These regulations are issued pursuant to OMB Circular A–129, dated May 9, 1985.

§ 12.103 Applicability.

(a) *Covered transactions.* These regulations apply to Department of the Interior domestic assistance transactions of direct loans, loan guarantees, loan insurance, debts arising from grants, and other administrative arrangements (including cooperative agreements) under the programs listed in Appendix A.

(b) *Excluded applicant.* Pursuant to paragraph 4 of OMB Circular A–129, these regulations do not apply to applicants which are State or local governments (including Indian tribal governments).

§ 12.104 Policy.

(a) In order to promote effective management of credit programs, it is the policy of the Department not to award funds to an applicant who is delinquent on a Federal debt until the delinquency is made current or a satisfactory agreement is made between the debtor and affected agencies.

(b) Exceptions to the policy in paragraph (a) of this section shall be made only where required by law or approved in accordance with the procedures in § 12.105(c).

§ 12.105 Procedures.

(a) Bureaus shall ensure tht all covered applicants for Federal financial assistance from the Department complete and submit the certification in Appendix B before further action is taken on the application. Bureaus may rely upon a seminannual certification by applicants with whom a continuing relationship has been established. The completed certification shall be included in the official file established for the transaction.

(b) For covered applicants who certify in accordance with paragraph (a) of this section that there is a delinquency on a Federal debt, and the delinquent account cannot be made current or satisfactory arrangements cannot be made between the affected agencies and the applicant, no award shall be made, except as authorized in paragraph (c) of this section.

(c) Bureau procedures shall require approval of the bureau head, or designee, to waive the policy in § 12.104(a) with respect to an applicant. Bureau procedures shall require that any waiver be made in writing and contain a full statement of facts supporting why such action is in the best interests of the Government. By November 15 of each year, bureaus shall submit an annual report to the Assistant Secretary—Policy, Budget, and Administration of any waivers made during the proceding fiscal year.

Appendix A to § 12.103

Department of the Interior Programs Covered by OMB Circular A–129, "Managing Federal Credit Programs"

15.108 Indian Employment Assistance
15.123 Indian Loans—Claims Assistance
15.124 Indian Loans—Economic Development
15.144 Indian Child Welfare Act—Title II Grant
15.145 Indian Grants—Economic Development (Indian Grant Program)
15.221 Cooperative Agreements for Research in Public Lands Management
15.250 Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining
15.308 Grants for Mining and Mineral Resources and Research Institutes
15.501 Distribution System Loans
15.502 Irrigation Systems Rehabilitation and Betterment
15.503 Small Reclamation Projects
15.600 Anadromous Fish Conservation
15.806 National Water Resources Research Program
15.808 Geological Survey—Regional and Data Acquisition
15.904 Historic Preservation Fund Grants-in-Aid

Appendix B to § 12.105

Certification of Non-Delinquency by Applicants for Federal Financial Assistance

1. The applicant certifies upon submission of this application that it is , is not in a defaulted status to any Federal agency or program on any loan, grant, cooperative agreement or other account to the Federal Government.

2. Any intentionally false statement in this certification is a violation of law punishable under 18 U.S.C. 1001.

Name of Applicant

Signature of Applicant

Date

[FR Doc. 88–10462 Filed 5–10–88; 8:45 am]
BILLING CODE 4310–RF–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 80483–8083]

Western Pacific Bottomfish Fisheries

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

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 2 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), which creates a limited access program for the bottomfish fishery in certain waters of the Northwestern Hawaiian Islands (NWHI). The program would establish a control zone called the Ho'omalu Zone, in which a person must have a limited access permit to fish, and a qualifying zone called the Mau Zone, in which a person could earn points to qualify for future eligibility for a limited access permit. Persons who can demonstrate participation in, or substantial financial commitment to participate in the NWHI fishery, on or before August 7, 1985, would be eligible for initial permits to participate in the Ho'omalu Zone fishery. A landings requirement would be established to maintain eligibility for annual renewal of permits. No new permits to enter the fishery would be issued until stocks are sufficiently large to provide adequate catches. A point system would be established to control issuance of permits for future access to the fishery. The Western Pacific Fishery Management Council (Council), with the advice of an industry and government Advisory Review Board, would make recommendations to the Regional Director, Southwest Region, NMFS, regarding future access to the fishery. The objectives of the limited access program are to reduce the risk of overfishing, reduce the level of over-capitalization in the fishery, increase stability in the fishery, and increase profitability or net return to the fishery. The Council will undertake a full evaluation of the effectiveness of the program in five years. This rule would also make it a violation of Federal law to fail to report fishery data in accordance with State reporting requirements and would require vessel operators to notify the U.S. Coast Guard prior to anticipated arrival in port to unload bottomfish taken in the NWHI.

DATE: Written comments must be received or on before June 20, 1988.

ADDRESSES: Comments should be sent to E.G. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the limited access program, the environmental assessment (EA), and the regulatory impact review (RIR) may be obtained by contacting the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1406, Honolulu, HA 96813, telephone 808–523–1368.

Comments on the collection of information requirement should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NOAA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner (Chief, Fisheries Management and Analysis Branch), 213–514–6660.

SUPPLEMENTARY INFORMATION: The domestic fisheries for bottomfish in the U.S. Exclusive Economic Zone (EEZ) adjacent to the State of Hawaii are managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). The FMP was developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented August 27, 1986 (51 FR 27413, July 31, 1986).

The Council explicitly considered, but did not adopt a limited access program in the FMP because further study was deemed necessary. In a separate notice action, the Council adopted a control data for access into the NWHI bottomfish fishery (51 FR 11462; April 3, 1986). This date (August 7, 1985) was set to provide a potential cutoff for eligibility based on past participation in the event the Council would choose prior participation as a criterion for eligibility for permits under the program. The intended effect of the cutoff date announcement was to discourage new access to the fishery based on speculation while further study and discussions were undertaken on whether, and if so how, access to the resource should be controlled. Such speculation frequently occurs and could have negated the effects of any limited access program. The notice also provided current and prospective fishermen a basis for making informed investment decisions knowing that limited access was a definite management possibility in the future.

It should be noted that the FMP, as approved, provided the option of instituting a limited access program through the framework process rather than as an amendment. The Council chose to use the FMP amendment process because of the significance of the action. The amendment process provides greater opportunity for broad public review as well as government agency reviews. The record will be far more complete as a result and will thus provide guidance to other Councils that may consider limited access for their fisheries.

The bottomfish fishery of the NWHI management area has grown greatly since vessels first began exploiting the resource in the 1980s. The fleet grew from 8 vessels in 1980 to 29 vessels in

1986. Landings increased substantially from only 100,000 pounds in 1981 to about 784,000 pounds in 1986. However, catch rates have dropped sharply for the most abundant and highly priced spices (opakapaka), and fishermen have been able to maintain total revenues only by harvesting larger amounts of less abundant (onaga) or less valuable (hapu'upu' u, ulua) species. Vessels also have had to make longer trips in attempts to find areas with higher catch rates and larger fish. It is estimated that the average vessel in the fishery is losing $50,000 or more per year before depreciation and taxes, despite increased fishing effort in relatively lightly fished areas where catch rates have been favorable. In summary, the fishery has been overcapitalized. Although some vessels have recently left the fleet, there is far more capacity to harvest fish than there are fish to be harvested. Further, the possibility exists that new vessels will enter the fishery despite the present over-fishing of the stocks and economic prospects. This situation was first brought to the Council's attention in 1984 when several vessel owners proposed that the Council develop a limited access program. The Council concluded that further information and analysis was necessary and proceeded to contract for a study. In 1985, the Council established a "control date" of August 7, 1985, which could serve as a cutoff for eligibility for access into the fishery under a future limited access program using prior participation as a criterion for initial permits.

This control date was published in the **Federal Register** (51 FR 11462, April 3, 1986), and work proceeded on an assessment of limited access alternatives. This proposed rule would implement the program supported by that assessment.

The goal of the limited access program is to achieve a longterm balance between harvesting capacity and harvestable stocks of bottomfish in the NWHI management subarea, so that those in the fishery will make a profit while the stocks remain healthy. This would be accomplished by initially limiting the number of persons and vessels eligible to obtain permits to fish for bottomfish in a newly designated Ho'omalu Zone in the NWHI management subarea. The program requires continuing participation in the fishery to maintain eligibility for renewal of permits, preventing new access until it is demonstrated that the bottomfish stocks can support additional effort, and establishing a system by which persons can earn points for possible access to the fishery when new access is permitted. A section-by-section summary of the program follows:

(a) Vessel owners and captains who can demonstrate that, on or before August 7, 1985, they participated in, or made commitments to invest (e.g., by obtaining a loan, making an offer to buy a vessel, or having a vessel under construction) for future participation in the fishery, would be eligible to obtain permits initially. This assures that those who were in the fishery, either as owners of vessels or as captains of those vessels, will have a continuing opportunity to participate regardless of monetary or non-monetary motivations but prevents new access until the health of the bottomfish stocks and the fishery can support additional boats. An owner with more than one vessel in the fishery in the qualifying period would be eligible for one permit for each vessel that made at least one qualifying landing of bottomfish in 1986 and 1987. A person who owns two or more vessels which made landing on or before August 7, 1985, but either none or only one of those vessels made a qualifying landing in 1986 and 1987 would be eligible for only one permit. The permits will be area-specific; a person with a limited access permit for the Ho'omalu Zone may not fish for bottomfish in the Mau Zone; and a person with a permit for the Mau Zone may not fish for bottomfish in the Ho'omalu Zone.

(b) Permits would be awarded to vessel owners for specific vessels. This is to recognize that the owners are the persons who have the greatest stake in the fishery and who would be most directly affected by the program. The owners decide how to use their vessels and associated resources and should have control over the permits for the vessels.

(c) Eligible owners would have five years from the effective date of the program (January 1, 1989) in which to apply for their initial permit. This is intended to provide flexibility for a vessel owner to defer obtaining a permit until the owner concludes conditions are suitable to enter the fishery. This should prevent an initial rush to participate in the fishery. Such an increase in participation could have resulted in further reduction in stocks under the license renewal conditions (i.e., 3 trip minimum).

(d) Documentation of participation would include official landing records submitted to a State or Federal agency demonstrating that the vessel made at least one landing (regardless of weight) of bottomfish from the NWHI on or before August 7, 1985. For the purposes of this section the NWHI is the area defined in § 683.5(a)(2) and is that portion of the EEZ adjacent to Hawaii that is west of 161°20' W. longitude.

(e) A person who can document that he was captain of a vessel that made one or more qualifying landings from the NWHI bottomfish fishery on or before August 7, 1985, and who becomes owner of a 50 percent or greater share of a vessel within five years of the effective date of this program also would be eligible for an initial permit within that time. This is intended to recognize that these captains should have the option of entering the fishery on the normal progression from captain to owner or part-owner of a vessel. It ensures that no owners or non-owner captains of vessels that made qualifying landings on or before August 7, 1985, will be automatically excluded from the fishery.

(f) A vessel for which a permit has been obtained must make at least three qualifying landings from the Ho'omalu Zone in the calendar year in which the permit was issued to be eligible for permit renewal for the next year. A qualifying landing is a landing which contained at least 2,500 pounds of bottomfish from the Ho'omalu Zone or a landing totalling more than 2,500 pounds of fish from the Ho'omalu Zone, of which at least half of the fish by weight was bottomfish. This is intended to provide a performance standard for continuing eligibility. Only those who continue to fish up to a minimum level will remain in the fishery. This provision is expected to result in a gradual reduction in the fleet. Some owners will conclude that other fisheries offer better opportunities and will shift effort accordingly; others will be unable to meet the landing criterion and will be forced to withdraw from the fishery. Remaining vessel owners will have a better chance of covering costs with less risk of biological overfishing of the stocks. The choice of three landings as the minimum performance level was based on the conclusion that the fishery is intended to support those who derive a sizable portion of their fishing income from the fishery. Requiring fewer than three landings would allow occasional participants to maintain eligibility, while more than three landings could pose a hardship for those whose vessels operate in two or more fisheries, including bottomfish in the NWHI. The program includes a provision for a permit holder to apply for a waiver from the three-landing requirement when circumstances beyond the holder's control prevented the permit holder's vessel from making the requisite landings. General economic conditions

or marketing difficulties will not qualify as sufficient reason for a waiver.

(g) An owner who obtains and then voluntarily surrenders a permit to the Regional Director in the first five years of the plan will have priority for a new permit when it is found the fishery can sustain new access. This is intended to encourage owners to withdraw from the fishery with minimal adverse impact in the long term. If successful, this step will provide better income opportunities for remaining participants and less risk of biological overfishing. If two or more owners voluntarily surrender permits and all apply to reenter at the same time, priority will be given to the person who first surrendered his permit. A permit holder may use this option only once.

(h) New permits may be issued in the future when the Regional Director, after consulting with the Council, finds that stocks are sufficient in the Ho'omalu Zone to generate catches high enough so that total fleet revenues with the added vessel(s) will equal or exceed total fleet costs (fixed plus variable). That is, the average vessel will have to exceed the break-even level of production before additional vessels will be permitted. This is intended to allow the fishery to become economically viable for the average vessel before new vessels will be allowed to compete for the resource. The Regional Director will place a notice in the Federal Register and use other means to notify prospective participants of the opportunity to apply for a permit under this program.

(i) Eligibility for new permits will be based on a point scale for prospective participants based on prior experience in fishing for bottomfish in the Hawaiian Archipelago. A vessel owner or captain would receive two eligibility points for each year for which he can document three or more qualifying landings of bottomfish caught in the NWHI. A qualifying landing for the point system is a landing which contained at least 2,500 pounds of bottomfish from the NHWI or which contained a total of at least 2,500 pounds of fish from the NWHI, at least half of which was bottomfish. One point would be awarded to an owner or captain for each year that the vessel landed at least 6,000 pounds of bottomfish from the main Hawaiian Islands. Points may only be earned for one area in any given year. The applicant who has at least a 25 percent interest in a vessel and who has the highest number of points would get the first new permit issued under the program, provided that no person who voluntarily surrendered a permit wants to reenter. This is intended to give priority to those captains who have served longest in the fishery without owning a vessel and who become owners (25 percent or more) of vessels to be used in the fishery. Participation as a captain in the NWHI qualifies for more points than in the main Hawaiian Islands because of the familiarity gained for that area. This is important in terms of safety and knowledge about the special protected resources of the NWHI. The partial ownership requirement is set to ensure that the participant will have an ongoing stake in maintaining the viability of the fishery. If two or more persons are tied for the highest number of points and the number of permits is less than the number of applicants, the permit(s) will be awarded by the Regional Director by a lottery system.

(j) Permits may not be sold or otherwise transferred. If a permitted vessel is sold, the seller will retain the permit. The prohibition on the sale of permits is intended to ensure that no persons will have a windfall financial benefit by virtue of eligibility for initial permits under the program and to minimize the potential for one or a few interests to acquire a virtual monopoly or oligopoly in the fishery. The Council considered using an individual fisherman's quota system but concluded that it would be impossible to agree on cumulative bottomfish quotas or species quotas that could be allocated in such shares. The Council also preferred not to allow the cost of permits to become a significant barrier to future access to the fishery.

(k) Notwithstanding the general prohibition on permit transfers, a permit holder may replace his permitted vessel with another vessel of up to 60 feet in length without obtaining any approvals. This is intended to allow a vessel owner to increase the size of his vessel for safety purposes. This provision recognizes that adverse sea conditions often arise in the control zone.

(l) A permit holder also may apply to the Regional Director for permission to replace his permitted vessel with another vessel of equal catching power. The Regional Director will consult with the Council before acting on such a request. This would allow use of a vessel with greater safety or comfort but not greater catching power.

(m) A permit holder may apply to the Regional Director for permission to replace his vessel with one of greater fishing power in order to maintain fishing power comparability with other permitted vessels in the fishery. The Regional Director will consult with the Council and will review the application for consistency with the objectives of the limited access program before taking action on such applications.

(n) Permits may be held and renewed by partnerships or corporations. If 50 percent or more of their interest in the permitted vessel passes to persons other than those listed in the original application, however, the permit will lapse and be surrendered to the Regional Director. This is intended to ensure that a partnership or corporation ownership will not be used to circumvent the prohibition on sale or transfer of a permit.

(o) Designated captains and relief captains must attend a workshop on safety and endangered species concerns specific to the NWHI. The waters in the NWHI present unusual conditions which give rise to special safety concerns. In addition, there are several endangered and threatened species in the area, and special management regulations exist to protect them. The workshop is intended to minimize the risk of problems associated with these factors.

(p) The Council will establish an Advisory Review Board to assist the Council in developing recommendations for the Regional Director concerning whether and when new access to the Ho'omalu Zone is appropriate, catching power equivalency for replacement vessels, and other matters in implementing this program. The Board will consist of nine persons, including two limited access permit holders, two persons fishing for bottomfish in the Mau Zone or around the main Hawaiian Islands, one person engaged in marketing or processing of NWHI bottomfish, two technical State fishery staff, and two NMFS staff. The technical staff will include at least one biologist and one economist. The term of nongovernment members is limited to five years, and initial terms may be staggered. The intent of the panel is to provide both technical information and practical fishery information in carrying out the program. The composition of the panel is intended to ensure full representation of fishing interests and technical experts on the fishery.

(q) The program provides an appeal mechanism by which persons can request higher level review of a decision by the Regional Director. The Assistant Administrator for Fisheries would decide such appeals.

(r) The Council is aware of the potential that the limited access program will not have the intended effects. This is a new approach, and the responses of fishermen cannot be predicted with certainty. It is quite possible that program changes will be

needed as experience is gained in the program. The effectiveness of the program will be assessed in the annual review of the fishery called for under the FMP. In addition, the Council will complete a special evaluation of the program after the initial five-year grace period during which historic participation is an automatic eligibility criterion. At that time, the Council and the NMFS will know how many persons are eligible for permits and can better predict future participation and problems.

(s) The proposed rule contains two provisions intended to facilitate monitoring of the fishery for future evaluation of its effectiveness and administration of the program. The first provision requires that fishermen with Federal permits to fish for bottomfish comply with State fishery reporting requirements. This will not add to the reporting burden but should strengthen the effectiveness of State reporting requirements. State-collected landings data will be important to determine changes in the fishery under this program and to assess whether the program is having the intended effects. The second provision requires vessel operators to notify the U.S. Coast Guard in advance of the anticipated arrival in port to unload bottomfish taken in the NWHI. This will support determination of participation by vessels in the fishery and occasional inspection of the catch to collect biological data with the cooperation of the vessel operators.

Nothing in the limited access program is intended to prevent or limit the authority of the Council to propose and the Secretary of Commerce (Secretary) to institute additional conservation and management measures necessary to protect the productivity of the bottomfish stocks of the NWHI. It is expected, however, that such measures will be far more likely to succeed after the limited access program is in effect. In addition, it is expected that, with limited access in effect, the participants in the fishery will ultimately have greater flexibility in their selection of fishing strategies to maximize economic returns or achieve non-monetary objectives with a reduced regulatory burden.

In developing this program, the Council considered the question of whether to make special provision for native Hawaiian fishing rights. No recommendations or proposals are made at this time. The Council is continuing to research this issue with the Native Hawaiian Legal Corporation and the Office of Hawaiian Affairs.

The proposed program will add slightly to the information collection burden under the FMP. Fishermen in the NWHI already are required to obtain permits under the current management regulations. Those who may be eligible for permits under the limited access program will have to provide additional information to document their prior participation or their financial commitment for anticipated participation in the fishery. This does not entail new catch or effort reporting requirements. However, the applicant will have to provide either copies of historic catch records filed with a State or Federal agency or a statement from a State or Federal agency confirming that the applicant was an owner or captain of a vessel that made qualifying landings from the fishery during the period in question.

The proposed rule does not require that catch, effort, or fishery operations data be submitted to the Secretary under this program. The FMP calls for an annual report to be prepared for Council consideration. The State and Territory governments and the NMFS provide information for this report, which is used to consider the need for changes in management of the fishery. The annual report includes an assessment of economic conditions as well as the status of the stocks. It is anticipated that existing State and Federal reporting requirements will be sufficient to make the determinations required under the limited access program. The provision making it a violation of Federal law to fail to report in conformance with State laws and regulations governing reporting landings should reinforce the effectiveness of state reporting requirements and enhance their enforcement.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of any amendment to an FMP. At this time, he has not determined whether the FMP amendment that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Southwest Region prepared an environmental assessment for this amendment and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment can be obtained from the Region or Council (see **ADDRESSES**).

The Council incorporated a regulatory impact review in the amendment, which concludes that this rule will have a long-term positive impact on the fishery and on related processing and marketing sectors. Preventing new access at this time will prevent additional effort, which would drive catch rates down to even lower levels than at present. The performance standard is expected to be sufficient to ensure that those dependent on the fishery will be able to maintain their participation without putting excessive pressure on the stocks, while those not dependent on the fishery will be less likely to maintain eligibility for future participation. The measure allowing those initially eligible to obtain permits to defer applying for permits for up to five years is expected to allow such persons flexibility to participate in other fisheries without losing eligibility; this would further reduce pressure on the stocks, while giving persons in the fishery a better chance to cover costs. The measure allowing voluntary surrender of a permit with priority for later access to the fishery is expected to encouarge some producers to exit from the fishery. Again, this will reduce pressure on the stocks and remaining participants should achieve better returns. The fishery accounted for total catch of 784,000 pounds valued at $1.9 million in 1986. Without the proposed program, the fishery is expected to decline to a level substantially below the maximum sustainable yield (MSY) level (600,000 pounds for the portion of the NWHI within the range for deliveries for the fresh fish market) and ex-vessel revenue would likely be less than $1 million per year. With the limited access program, the fishery is expected to achieve production of 600,000 pounds per year (the MSY) valued at $1.4 million. In addition, the average vessel is expected to be able to cover all costs of operation, although some vessels will make more and some less. Furthermore, deliveries of fish to markets are expected to be more stable and level throughout the year, which will benefit both marketers and consumers. Finally, although there may be a one-time increase in administrative costs to implement the program initially, these costs will be reduced over time as the size of the harvest sector is reduced and fishery patterns become more stable.

The Under Secretary, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in

a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

This proposed rule is exempt from the review procedures of section 8(a)(2) of Executive Order 12291. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99–659, require the Secretary to publish this rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses. No person who participated in the fishery on or before the control date will be forced to exit the fishery. Only ten entered the fishery in 1986 and a few more in 1987, but all had had notice that they were entering subsequent to the cut-off date and could be excluded from the fishery if the limited access program were adopted. The program will provide an opportunity for fishermen to make the own decisions concerning whether to remain in the fishery. The reporting burden will be somewhat increased to obtain information needed to decide whether applicants are eligible for permits, but the added burden is slight. Therefore, a regulatory flexibility analysis was not prepared.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. Permit application procedures will not change appreciably from those now in place, but applicants will have to obtain and submit certification of records of past participation or documentation of commitments intended to lead to future participation in the fishery in past years. In addition, it is proposed that permit holders be required to report in advance their anticipated arrival in a port to unload fish taken in the Ho'omalu zone of the NWHI. The new information collection request has been submitted to the Office of Management and Budget for clearance. Current reporting requirements are authorized by OMB number 0648–0097. Further, it is proposed that it be a violation of Federal law to fail to report fishery data in accordance with State reporting requirements. This is not a new reporting burden on fishermen; it merely facilitates enforcement of existing State reporting requirements.

The Council has initially determined that the measures established in this amendment are consistent to the maximum extent practicable with the approved Coastal Zone Management Program in Hawaii. A letter requesting the State of Hawaii's concurrence was forwarded by the Council.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Exectutive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries, Reporting and recordkeeping requirements.

Dated: April 29, 1988.

Rolland A. Schmitten,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 683 is proposed to be amended as follows:

PART 683—[AMENDED]

1. The authority citation for 50 CFR Part 683 continues to read as follows:

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

2. In § 683.2, a new definition for *Qualifying landing* is added to read as follows:

§ 683.2 Definitions.

* * * * *

Qualifying landing means a landing that meets a standard required for permit eligibility under § 683.25, as follows:

(a) Initial permit eligibility.

(1) A qualifying landing for initial permit eligibility under § 683.25(b)(1) and (3) is a landing that contained bottomfish from the NWHI, regardless of amount, and which was made on or before August 7, 1985;

(2) A qualifying landing for 1986 and 1987 under § 683.25(b)(2) is a landing which contained at least 2,500 pounds of bottomfish from the NWHI or a landing of at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish;

(b) Permit renewal—a qualifying landing for permit renewal under § 683.25(e) is a landing which contained 2,500 pounds of bottomfish from the NWHI or a landing or at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(c) New access eligibility points—a qualifying landing for eligibility points under § 683.25(d) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985, a landing of at least 2,500 pounds of bottomfish from the NWHI, or a landing of at least 2,500 pounds of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

* * * * *

3. In § 683.5, paragraph (a)(2) is amended by adding (a)(2)(i) and (ii) to read as follows:

§ 683.5 Management subareas.

(a) * * *

(2) * * *

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W longitude.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161° 20′ and 165° W longitude.

* * * * *

4. § 683.6, paragraph (k) is redesignated (n) and new paragraphs (k), (1), and (m) are added, to read as follows:

§ 683.6 General prohibitions.

* * * * *

(k) Fish for bottomfish in the Ho'omalu Zone without a limited access permit issued under § 683.25;

(1) Serve as captain or relief captain on a vessel fishing for bottomfish in the Ho'omalu Zone without first participating in a protected species seminar conducted by the National Marine Fisheries Service and U.S. Fish and Wildlife Service;

(m) Falsify or fail to make and/or file any and all reports of bottomfish landings, containing all data and in the exact manner, required by the applicable State law as specified in § 683.25, provided that the person is required to do so by the applicable State law;

* * * * *

5. A new § 683.10 is added to read as follows:

§ 683.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any applicant for a permit or permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed and the reasons for the appeal, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder, as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set forth in 50 CFR Part 683 and the amendment to the bottomfish FMP, as appropriate, based upon information relative to the application on file at the NMFS and the Western Pacific Fishery Management Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in section 3 of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing will normally be held no later than 30 days following publication of the notice in the **Federal Register** unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer will recommend in writing a decision to the Assistant Administrator.

(d) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

6. A new § 683.11 is added to read as follows:

§ 683.11 Reports.

Any person who has a Federal permit to fish for bottomfish or seamount groundfish in the NWHI, and who is required to do so by the applicable State law, must make and/or file any and all reports of bottomfish landings, containing all data and in the exact manner required by the applicable State law.

7. In § 683.21, paragraphs (a) and (f) are revised to read as follows:

§ 683.21 Permit requirement for the Northwestern Hawaiian Islands.

(a) *Permit areas.* (1) The owner of any vessel being used to fish for bottomfish in the Mau Zone must have a permit issued under this section for that vessel.

(2) The owner of any vessel fishing for bottomfish in the Ho'omalu Zone must have a permit issued under § 683.25 for that vessel.

(3) The owner of any vessel fishing for seamount groundfish in a given, fishery management area must have a permit issued under this section for that vessel.

(4) No vessel may be covered by a permit for both the Ho'omalu Zone and the Mau Zone at the same time.

* * * * *

(f) *Expiration.* Permits issued under this section expire on December 31 of the year covered by the permit.

* * * * *

8. Section 683.25 is redesignated § 683.26, and a new § 683.25 is added to read as follows:

§ 683.25 Limited access management program.

(a) *Limited access permits.* General requirements.

(1) The owner of any vessel engaged in fishing for bottomfish in the Ho'omalu Zone must have a permit issued under this section.

(2) Permits issued under this section expire on Decmeber 31 of the year covered by the permit.

(3) Each application for a permit must be submitted to the Regional Director by the vessel owner at least 30 days before the date on which the applicant wants the permit to be effective.

(4) Each application must be submitted on the form used to apply for a permit under § 683.21(b) and a supplementary information sheet to be provided by the Regional Director. Each application must be signed by the vessel owner and must contain, in addition to the information listed in § 683.21(b)(2), the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation with a certification from a State or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) Notarized copies of loan documents or other documents that would demonstrate financial commitments on or before August 7, 1985, to enter the NWHI bottomfish fisher; or

(iv) Written evidence indicating that an offer was made to purchase a vessel or that a vessel was under construction, on or before August 7, 1985, and that the vessel was to be used in the NWHI bottomfish fishery.

(v) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(5) Protected species seminar. Each designated captain and relief captain must participate in a seminar conducted by NMFS and U.S. Fish and Wildlife Service to ensure familiarity with protected species laws and regulations applicable to the NWHI and the species those laws and regulations are designed to protect.

(6) Sale or transfer of permits to new owners.

(i) A vessel permit may not be sold or otherwise transferred to a new owner.

(ii) A permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(7) Transfer of permits to new vessels.

(ii) An owner of a permitted vessel may, without limitation, transfer his permit to another vessel owned by him, provided that the replacement vessel does not exceed 60 feet in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(ii) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 feet in length. The Regional Director may allow this change upon determining, after consulation with the Council and considering the objectives of the limited

access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(iii) The Regional Director will consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(b) *Supplementary requirements for initial permits.* An application for an initial permit under this paragraph must be filed within five years of the effective date of this program. A permit for a vessel to be used for fishing for bottomfish in the Ho'omalu Zone may be issued to:

(1) Any owner who can document that a vessel owned by him made one or more qualifying landings of bottomfish from the NWHI on or before August 7, 1985.

(2) Any owner of two or more vessels that made at least one qualifying landing under (b)(1) of this section, or such owners may obtain a permit for each such vessel that made at least one qualifying landing of bottomfish under (b)(1) of this section and also in both 1986 and 1987.

(3) Any person who can document that on or before August 7, 1985, he or she had incurred substantial expenditures for or had received written approval of a loan to purchase or construct a vessel to be used in the NWHI bottomfish fishery.

(4) Any person who can document that on or before August 7, 1985, he or she made an offer to purchase a vessel for the NWHI bottomfish fishery or had such a vessel under construction.

(5) Any person who can document that he or she was captain of a vessel that made at least one qualifying landing of bottomfish from the NWHI on or before August 7, 1985, and who becomes an owner of 50 percent or more interest in a vessel within five years of the effective date of this program.

(c) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, he may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions such that the vessel operations would not be profitable.

(d) *Supplementary requirements for new access permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort. This will be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalu Zone by an amount at least equal to the average cost of a vessel year. This determination will be made and published annually in association with the annual report required under § 683.24 of this part.

(e) *Eligibility.* When the Regional Director has determined under paragraph (d) of this section that new permits may be issued, they will be issued to applicants based upon eligibility determined as follows:

(1) *Point system.* (i) Two points will be assigned each year in which the applicant was owner or captain of a vessel, which made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point will be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 pounds of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under (e)(1)(i) or under (e)(1)(ii) of this section for any one year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) New permits will be awarded to applicants in descending order starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits will be awarded by the Regional Director through a lottery.

(4) Notwithstanding (e)(3) of this section, a person who originally qualifies for and obtains a permit under § 683.25(a) and who voluntarily surrenders that permit to the Regional Director within the first five years of this program will have priority over applicants under the point scale system for a new permit under this section. If two or more persons qualify under this provision, the person surrendering his permit at the earliest date will have first priority. If two or more such persons are equally qualified under the date of surrender criterion, the permit will be awarded by the Regional Director by a lottery. A permit holder may qualify for this provision only one time.

(5) The Regional Director will place a notice in the **Federal Register** and will use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

9. A new § 683.27 is added to read as follows:

§ 683.27 Notification of landings.

The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the U.S. Coast Guard, by radio or otherwise, at the 14th District, Honolulu, Hawaii (Telex: 392401); Pacific Area, San Francisco, California (Telex: 330427); or 17th District, Juneau, Alaska (Telex: 45305), at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

10. A new § 683.28 is added to read as follows:

§ 683.28 Native Hawaiian fishing rights [Reserved]

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BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Valuation of Human Life in Regulatory Decisionmaking; Postponement of Meeting; Extension of Comment Period

AGENCY: Administrative Conference of the United States.

ACTION: Postponement of meeting; extension of comment period.

SUMMARY: The Administrative Conference of the United States announces that its Committee on Regulation will not meet on Thursday, May 12 as tentatively scheduled. The Committee was to discuss the draft recommendation "Valuation of Human Life in Regulatory Decisionmaking" based on a report by Professors Clayton P. Gillette and Thomas D. Hopkins. (See **Federal Register:** announcement of Friday, April 22, 1988.) The Committee, however, has decided to extend the deadline for receipt of public comments to Friday, June 24, 1988. Copies of the report may be obtained from the Conference.

DATE: Please submit comments by June 24, 1988.

ADDRESS: Send comments to Sara Gordon, Administrative Conference of the United States, Suite 500, 2120 L Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, 202/254–7020.

Dated: May 9, 1988.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 88–10604 Filed 5–10–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 6, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service
- Sweet Cherries Grown in Designated Counties in Washington Marketing Order No. 923
- On occasion
- Farms; Businesses or other for-profit; 203 responses; 63 hours; not applicable under 3504(h)
- Virginia Olson, (202) 447–5057
- Agricultural Marketing Service
- Washington-Oregon Prunes Marketing Order No. 924
- On occasion; Biennially
- Farms; Businesses or other for-profit; 91 responses; 22 hours; not applicable under 3504(h)
- Virginia Olson, (202) 447–5057
- Agricultural Marketing Service
- Onions Grown in Idaho and Malheur County, Oregon Marketing Order No. 958
- On occasion; Biennially; Recordkeeping
- Farms; Businesses or other for-profit; 747 responses; 113 hours; not applicable under 3504(h)
- Virginia Olson, (202) 447–5057

Reinstatement

- Human Nutrition Information Service
- Continuing Survey of Food Intakes by Individuals (CSFII) 1989–92
- On occasion
- Individuals or households; 8,650 responses; 8,750 hours; not applicable under 3504(h)
- Robert L. Rizek, (301) 436–8457.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 88–10562 Filed 5–10–88; 8:45 am]

BILLING CODE 3410–01–M

Office of Inspector General

Privacy Act of 1974; Public Notice of Computer Matching Programs; Rice Cooperative Loan Files and Agricultural Stabilization and Conservation Service Loan Files

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of computer matching programs.

SUMMARY: The Office of Inspector General (OIG), United States Department of Agriculture (USDA), is providing notice that it intends to conduct a matching program for crop years 1986 and 1987 to detect and prevent fraud and abuse in USDA programs. The match will compare Agricultural Stabilization and Conservation Service (ASCS) records of rice producers who received price support loans from ASCS county offices against rice cooperative records of producers who received support loans through cooperatives, for the purpose of identifying producers who received

duplicate price support benefits. The match will be made under written agreement between OIG and five rice cooperatives in Arkansas, California, and Texas. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, D.C., 20250, telephone (202) 447–6915.

Report of Matching Programs: Rice Cooperative Loan Files and Agricultural Stabilization and Conservation Service Loan Files

(a) *Authority:* Pub. L. No. 95–452, Inspector General Act of 1978, 5 U.S.C. App.

(b) *Program Description and Purpose:* One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. No. 95–452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to obtain from five rice cooperatives computer files showing all cooperative members who delivered rice to the cooperative for ASCS price support loans. The cooperative files will be matched against ASCS computer files showing all producers that received price support loans directly through an ASCS county office. The match will determine the extent to which rice producers received duplicate price support benefits for the same rice. A pilot matching program will be conducted for crop year 1986 rice. If the pilot indicates a significant number of producers received duplicate price support benefits, the match will be expanded to crop year 1987.

The match will be accomplished through the use of computer files and will identify producers receiving benefits both through cooperatives and directly from ASCS county offices. Common identifiers such as name, social security number, and farm code number will be used to identify the matches of common elements or "hits." OIG will follow up on the "hits" through review of USDA program records and cooperative records, as necessary. Instances where possible fraud or abuse are identified will be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

(c) *Files to be used in this matching program:* (1) Rice cooperative files of all members who delivered rice for ASCS price support loans; and

(2) ASCS producer payment reporting file containing Price Support Rice Loan information (USDA/ASCS–22).

(d) *Projected starting and ending dates:* The matching program for the 1986 crop year (and for crop year 1987 if the match is expanded) is scheduled to begin and end in fiscal year 1988.

(e) *Security safeguards:* Computer files used in the matching program will be stored in secure libraries and access will be restricted to those individuals who have a legitimate need to handle the material in order to accomplish the match. The personal privacy of individuals identified in the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "nonmatching" individuals may also be extracted for the purpose of verifying that they were in compliance with eligibility requirements to receive price support through the cooperative.

(f) *Disposition of source records and "hits":* All files received will be destroyed or returned to their source at the completion of the match. Resulting "hit" information may be retained in audit workpapers and referred to as noted above.

Dated: May 5, 1988.

Robert W. Beuley

Inspector General.

[FR Doc. 88–10477 Filed 5–10–88; 8:45 am]

BILLING CODE 3410–23–M

Privacy Act of 1974; Public Notice of Computer Matching Programs–State Agency Food Stamp Program Participant Files and Department of Justice, Immigration and Naturalization Service Alien Status Files

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of computer matching programs.

SUMMARY: The Office of Inspector General (OIG), United States Department of Agriculture (USDA), is providing notice that it intends to conduct a matching program to detect and prevent fraud and abuse in USDA programs. The match will compare State agency Food Stamp Program (FSP) participant records against Immigration and Naturalization Service (INS) alien status records for the purpose of identifying ineligible aliens who are receiving FSP benefits. The match will be made under written agreement between USDA and INS. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, D.C., 20250, telephone (202) 447–6915.

Report of Matching Programs: State Agency Food Stamp Program Participant Files and Immigration and Naturalization Service Alien Status Files

(a) *Authority:* P.L. No. 95–452, Inspector General Act of 1978, 5 U.S.C. App.

(b) *Program Description and Purpose:* One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. No. 95–452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to provide INS with lists of State FSP participants to be matched against INS alien status records to determine whether ineligible aliens are receiving FSP benefits. A pilot program will match New Mexico FSP participant files against INS alien status files. If the pilot match indicates that a significant number of ineligible aliens are receiving FSP benefits, the match will be expanded to other States.

The match will be accomplished through the use of computer files and will identify aliens receiving FSP benefits. Common identifiers such as name, date of birth, alien number, social security number, and residence will be used to identify the common elements or "hits." INS will provide to OIG a list of matches of common elements or "hits." OIG will follow up on the "hits" through review of USDA program records and FSP records, as necessary. Instances where possible fraud or abuse are identified will be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

(c) *Files to be used in this matching program:* (1) State agency Food Stamp Program master files; and

(2) Department of Justice, Immigration and Naturalization Service alien status files.

(d) *Projected starting and ending dates:* The matching program for the

pilot match in New Mexico is scheduled to begin and end in fiscal year 1988. The matching program, if expanded to other States, will begin in fiscal year 1988 and end in fiscal year 1989.

(e) *Security safeguard:* Computer files used in the matching program will be stored in secure libraries and access will be restricted to those individuals who have a legitimate need to handle the material in order to accomplish the match. The personal privacy of individuals identified in the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "nonmatching" individuals will not be extracted for any purpose and the files will not be used for any match without specific written agreement between OIG and INS.

(f) *Disposition of source records and "hits":* All files received will be destroyed or returned to their source at the completion of the match. Resulting "hit" information may be retained in audit workpapers and referred as noted above.

Dated: May 5, 1988.

Robert W. Buley,

Inspector General.

[FR Doc. 88-10478 Filed 5-10-88; 8:45 am]

BILLING CODE 3410-23-M

Forest Service

Suitability Analysis and Study Report of Two Rivers Being Considered for National Wild and Scenic River Status, as Part of Supplementation to the Final Environmental Impact Statement for the Ouachita National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: This Notice of Intent revised the Ouachita National Forest Notice of Intent dated August 5, 1987 [52 FR 31648, No. 162/Friday, August 21, 1987], to include the analysis of two rivers, and to change the dates for the release of the Draft Supplemental Environmental Impact Statement for amendment of the Ouachita National Forest Land and Resource Management Plan.

SUMMARY: As part of the supplemental analysis to the Final Environmental Impact Statement for the Ouachita National Forest Land and Resource Management Plan, the Department of Agriculture, Forest Service will study the suitability or non-suitability of two rivers on the Ouachita National Forest in Arkansas for inclusion in the National Wild and Scenic Rivers System.

The agency invites written comments and suggestions on the suitability of these two rivers. In addition, the agency gives notice of the environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the suitability of these two rivers should be received by June 15, 1988 to assure timely consideration.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Gary Pierson, Planning Team Leader, PO Box 255, Mount Ida, Arkansas 71957.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the environmental analysis to Gary Pierson, Planning Team Leader, PO Box 255, Mount Ida, Arkansas 71957.

SUPPLEMENTARY INFORMATION: The Ouachita National Forest determined the eligibility of segments of four rivers which were initially identified in the 1982 Nationwide Rivers Inventory: Little Missouri; Cossatot; Ouachita; North, Alum, and Middle Fork of the Saline Rivers. All were found to be eligible. The suitability studies for two of the rivers will be prepared as part of the supplemental analysis of the Forest Plan:

Little Missouri River (head to Forest boundary), 12.2 miles

Cossatot River (from confluence with Mine Creek to Forest Boundary), 11.1 miles

Due to limited ownership and the limited amount of the segments being with Forest boundary, the Ouachita, North Fork, Alum Fork, and Middle Fork of the Saline Rivers were determined to be more appropriate for the State of Arkansas. The Forest Service has assigned potential classifications and standards to protect these rivers and their values until they are studied.

Public participation will be essentially important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). Scoping for these rivers started in August of 1987 with public meetings and field trips on the eligibility determinations and has continued with the public involvement for the overall supplemental analysis to the forest plan. Open Houses were held during the week of March 12–19, at which time additional comments were received on the suitability of the individual river segments. This input will be used in preparation of the draft supplemental environmental impact statement. Other public participation activities have included presentations to various public groups, individual meetings, and contact with state, local and other federal agencies.

The range of alternatives will include the discussion of recommendations for:

—Designation of all eligible segments, with classifications as identified in the eligibility determinations.

—All eligible segments with designation under the state system

—No action, no designation of any eligible segments

—Designation of all eligible segments with classifications different from those identified during eligibility.

—Designation of all or parts of the eligible segments with classifications and corridor boundaries different from eligibility studies.

The draft supplemental environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) by October 1988. At that time, the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period will be 90 days from the date the notice appears in the **Federal Register.** It is very important that those interested in the suitability of these two rivers for inclusion in the National Wild and Scenic River System participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement and the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement.

After the comment period ends on the draft Environmental Impact Statement, the comments will be analyzed and considered by the Forest Service in preparing the final Environmental Impact Statement. The final supplemental environmental impact statement is scheduled to be filed by April 1989. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the SEIS and

applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under Forest Service appeal regulations.

John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW, Atlanta, GA 30367, is the responsible official for the Supplementary EIS.

The Wild and Scenic Rivers suitability study report will be included as an appendix to the Draft and Final Supplemental Environmental Impact Statement.

The Secretary of Agriculture will consider the comments, responses, environmental consequences discussed in the study report of the EIS in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

John E. Alcock,

Regional Forester.

Date: May 4, 1988.

[FR Doc. 88-10413 Filed 5-10-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m., on May 25, 1988, in Room 137 of the U.S. District Court, 141 Church Street, New Haven, Connecticut. The purpose of the meeting is to complete plans for a community forum on various proposed issues. The Advisory Committee will also formulate plans for limited circulation of Collection Data on Bias-Related Incidents in Connecticut, a summary report recently approved.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James H. Stewart (203/486-3417), or John Binkley, Director of the Eastern Regional Division 202/523-5264, (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 5, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10465 Filed 5-10-88; 8:45 am]

BILLING CODE 6335-01-M

Louisiana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m., on May 27, 1988 at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana. The purpose of the meeting is to discuss the nature and extent of issues and possible problems related to the administration of justice for homosexual persons in New Orleans.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 4, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10466 Filed 5-10-88; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on June 2, 1988, at the Holiday Inn of Las Cruces, 201 East University, Las Cruces, New Mexico. The purpose of the meeting is to provide orientation to the membership, review the status of the agency and regional operations, and to discuss civil rights issues affecting the State, including immigration.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Vincent J. Montoya, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 5, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-10467 Filed 5-10-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 383]

Disapproval of Application of the Little Rock Port Authority for Subzone Status for Polar Stainless Products, Inc., Searcy, AR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Little Rock Port Authority, on behalf of the State of Arkansas, Grantee of Foreign-Trade Zone No. 14, has made application (filed December 9, 1985, FTZ Doc. 43-85, 50 FR 52350) to the Board for authority to establish a special-purpose subzone at the stainless steel sink manufacturing plant of Polar Stainless Products, Inc., in Searcy, Arkansas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board, having reviewed the proposal in the light of the Government's steel policy and the low level of imports of the product involved, has determined that its approval would not be in the public interest because it would tend to encourage the use of foreign steel material and result in a net negative economic impact;

Now, therefore, the Board hereby orders:

That the application filed December 9, 1985 (FTZ Doc. 43–85) is disapproved.

Signed at Washington, DC, this 26th day of April, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–10524 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–05–M

[A–16–88]

Foreign-Trade Zone 33, Pittsburgh, PA; Boundary Modification for Verosol USA, Inc.

Notice is hereby given that the Regional Industrial Development Corporation of Southwestern Pennsylvania (RIDC), grantee of Foreign-Trade Zone 33, Pittsburgh, Pennsylvania, has requested authority pursuant to the regulations of the Foreign-Trade Zones (FTZ) Board (the Board) (15 CFR 400.1301(j)), for a temporary modification until December 31, 1988, of the boundary of FTZ 33, within the Pittsburgh Customs port of entry.

RIDC has an application pending before the FTZ Board for a special-purpose subzone at a 7.6-acre site located at 215 Beacham Drive in Kennedy Township to be occupied by Verosol USA. Inc. (Doc. 11–88, 53 FR 7222, 3–7–88). A decision on the application is not expected until late-1988. Verosol is currently a tenant within FTZ 33 and is using zone procedures to inspect and process window shade fabric. Because Verosol is moving its operation to the new site in June 1988, RIDC has requested temporary approval under the FTZ boundary modification procedures for zone status within a 36,000 sq. ft. building at the new site to avoid an interruption in zone procedures while the subzone application is pending. The applicant and Verosol have acknowledged their understanding that a decision on the boundary modification would have no bearing on the outcome of the subzone proposal.

The activity does not involve a change in Customs classification or country of origin. Thus, the operation does not involve manufacturing, and no such authority is being requested as part of this proposal.

The request has been reviewed by the District Director of Customs (4–26–88) and the Army District Engineer (4–26–88). They concur in the request, subject to specific clearances or permits that might be required from these officials. The Customs letter indicates that an interruption in zone procedures followed by an activation of the subzone would result in an administrative burden.

The request has been reviewed by the FTZ Staff, and it appears that the request meets the criteria for temporary boundary modifications. Before issuing in final decision, however, the FTZ Staff invites comments from interested parties. They must be submitted to the office below in writing (in triplicate) by May 27, 1988.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 15th & Constitution Avenue NW., Washington, DC 20230.

Dated: May 6, 1988.

[FR Doc. 88–10525 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–802]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Canadian producer, c & f, delivered, duty paid. Petitioner deducted Canadian inland freight, U.S. duty, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Canada, which was based on the U.S. industry's cost experience, adjusted to reflect Canadian labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 48.63 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled

appliance plugs and internal probe thermostats therefor from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptable) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will nofify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88-10526 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-801]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Hong Kong

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Hong Kong producer, c & f, delivered, duty paid. Petitioner deducted Hong Kong inland freight, ocean freight, U.S. duty, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Hong Kong, which was based on the U.S. industry's cost experience, adjusted to reflect Hong Kong's labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value,

dumping margins of 23.07 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system for tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Hong Kong materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–10527 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–605]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Japanese producer, c & f, delivered, duty paid. Petitioner deducted Japanese inland freight, ocean freight, U.S. duty, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Japan, which was based on the U.S. industry's cost experience, adjusted to reflect Japanese labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 74.70 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Record Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings) and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9036.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10528 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-557-801]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Malaysian producer, c & f, delivered. Petitioner deducted Malaysian inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated constructed value of thermostatically controlled appliance plugs from Malaysia, which was based on the U.S. industry's cost experience, adjusted to reflect Malaysian labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 27.22 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necesssary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegation.

We examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia and found that it meets the requirements of section 732(b) of the Act. Therefore in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbes and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the temperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small hearing apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88–10529 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–801]

Initiation of Antidumping Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action

so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 22, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA) Inc. on behalf of U.S. producers of thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten materially injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on sales and offers for sales by a Taiwanese producer, c & f, delivered. Petitioner deducted Taiwanese inland freight, ocean freight, brokerage and handling charges, and U.S. inland freight.

Petitioner based foreign market value on the estimated contructed value of thermostatically controlled appliance plugs from Taiwan, which was based on the U.S. industry's cost experience, adjusted to reflect Taiwanese labor costs. To the sum of materials and fabrication costs, the petitioner added the statutory minimums of ten and eight percent, respectively, for general expenses and profit.

Based upon a comparison of United States price and foreign market value, dumping margins of 30.00 percent have been alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner which supports the allegations.

We examined the petition on thermostatically controlled appliance plugs and internal probe and internal probe thermostats therefor from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determinaton by September 22, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting the petitioner to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and the petitioner may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of these investigations, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity and thus the termperature therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it al nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988 whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10530 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-OS-M

[C-122-803]

Initiation of Countervailing Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If this determination is affirmative, we will make the preliminary determination on or before July 9, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA), Inc., on behalf of the U.S. industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), and that these imports materially injure, or threaten material injury to, a U.S. industry

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada, and have found that it meets these requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

Scope of Investigation

The Untied States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and are currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Allegation of Subsidies

The petition lists certain practices by the Government of Canada which allegedly confer subsidies on manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor. We are initiating on the following alleged programs:

- Program for Export Market Development (PEMD).
- Regional Development Incentive Program (RDIP).

Although not specifically alleged by the petitioner, we are also investigating whether the Canadian industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor receive countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Canadian investigations:

- Promotional Projects Program (PPP).
- Community-Based Industrial Adjustment Program (CIAP).
- Industrial and Regional Development Program (IRDP).

- General Development Agreement (GDA).
- Investment Tax Credits (ITC).
- Export Credit Financing.
- Economic and Regional Development Agreements (ERDA).
- Agricultural and Rural Development Agreements (ARDA).
- Ontario Development Corporation (ODC).

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988, whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c) (2) of the Act.

May 5, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-10531 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-802]

Initiation of Countervailing Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA), Inc., on behalf of the U.S. industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on thermostatically controlled appliance plugs and internal probe thermostats therefor from Malaysia and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to

automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube [which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and are currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Allegation of Bounties or Grants

The petition lists certain practices by the Government of Malaysia which allegedly confer bounties or grants on manufacturers, producers, or exporters in Malaysia of thermostatically controlled applicance plugs and internal probe thermostats therefor. We are initiating an investigation of the following alleged programs:

- Export Tax Incentives.

—Abatement of Taxable Income Based on the Ratio of Export Sales to total Sales
—Abatement of Five Percent of the Value of Indigenous Materials Used in Exports
—Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products
—Double Deduction for Export Credit Insurance Payments
—Double Deduction for Export Promotion Expenses

- Pioneer Status Under the Investment Incentives Act of 1968.
- Pioneer Status Under the Promotion of Investments Act of 1986.

Although not specifically alleged by the petitioner, we are also investigating whether the Malaysian industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor receives countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Malaysian investigations:

- Export Credit Refinancing.
- Export Tax Incentives.

—Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales Under Section 29 of the Investment Incentives Act of 1968, as Amended
—Income Tax Deduction for a Percentage of the Value of Buildings Used as Warehouses to Store Goods for Export

- Export Insurance Program.
- Medium- and Long-term Government Financing.
- Other Tax Incentives.

—Investment Tax Allowance Under the Promotion of Investment Act of 1986
—Accelerated Depreciation Allowance of 40 Percent of Qualifying Expenditures Under the Income Tax Act of 1967, as Amended in 1979
—Reinvestment Allowance of 25 Percent for Capital Expenditures on a Factory, Plant, or Machinery Under Section 133A of the Income Tax Act of 1967, as Amended in 1979

- Reduction in the Cost of State Land for New Industry and Agriculture.
- Preferential Financing for Bumiputras.

We are not initiating an investigation of the following programs alleged by the petitioner:

- Export Tax Incentives.

—Abatement of Taxable Income of Five Percent of the Value of Malaysian-made Inputs Incorporated into Exports
—Abatement of Taxable Income Based on a Percentage of the Value-added of Exported Products

These programs were determined not to exist in *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Malaysia* (53 FR 13303, April 22, 1988) (*Wire Rod II*).

- Loans from the Malaysian Industrial Development Finance Corporation (MIDF); financing from the MIDF was determined to be not countervailable in *Wire Rod II*.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

FR Doc. 88-10532 Filed 5-10-88; 8:45 am]

BILLING CODE 3501-DS-M

[C-583-802]

Initiation of Countervailing Duty Investigation: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) so that it may determine whether imports of the subject merchandise materially injure or threaten material injury to a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 30, 1988. If that determination is affirmative, we will make a preliminary determination on or before July 9, 1988.

EFFECTIVE DATE: May 11, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On April 15, 1988, we received a petition in proper form filed by Triplex Inter Control (USA), Inc., on behalf of the U.S. industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Since Taiwan is a "country under the agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on thermostatically controlled appliance plugs and internal probe thermostats

therefor from Taiwan and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 9, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *TSUSA* item numbers 711.7820 and 711.7840 and are currently classifiable under HS item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60 and 9033.00.00.

Allegation of Subsidies

The petition lists certain practices by the authorities in Taiwan which allegedly confer subsidies on manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor. We are initiating an investigation of the following alleged programs:

- Preferential Export Financing.
- Export Loss Reserves.
- Accelerated Depreciation and Tax Holidays.
- Preferential Income Tax Rate Ceiling of 25 percent for Big Trading Companies.
- Duty Exemptions and Deferrals on Imported Equipment. Although not specifically alleged by the petitioner, we are also investigating whether the Taiwanese industry producing thermostatically controlled appliance plugs and internal probe thermostats therefor receives countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Taiwanese investigations:
- Preferential Income Tax Rate Ceiling of 22 Percent.
- Overrebate of Duty Drawback on Imported Materials. Physically Incorporated in Export Merchandise.
- Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise.

We are not initiating an investigation of the following programs alleged by the petitioner:

- Business Tax Exemptions and Stamp Reductions for Export Sales (Tax Exemptions for Export Sales).
- Tax Credit for Investment in Production Equipment. These programs were determined to be not countervailable in *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods from Taiwan* (51 FR 19583, May 30, 1986).
- Preferential Long-Term Loans. This program was determined to be not countervailable in *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan* (51 FR 42891, November 26, 1986).

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 30, 1988, whether there is a reasonable indication that imports of thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

May 5, 1988.

[FR Doc. 88–10533 Filed 5–10–88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 86–00006.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Abreu de la Mota & Associates International, Inc. (ADLM). Because the certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to ADLM.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export

Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325. Pursuant to this authority, a certificate of review was issued on November 17, 1986 to ADLM (application No. 86–00006).

A certificate holder is required by law (section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation (§ 325.10(a) and 325.14(c) of the Regulations).

On November 6, 1987, the Department of Commerce sent to ADLM a letter containing annal report questions with a reminder that its annual report was due on January 1, 1988. Additional reminders were sent on January 15 and on January 26, 1988. The Department has received no written response to any of these letters.

On May 4, 1988, and in accordance with § 325.10(c)(2) of the Regulations, a letter was sent by certified mail to notify ADLM that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regualtions, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the Federal Register of a revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the Regualtions). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§ 325.10(c)(4) and 325.11 of the Regualtions).

Date: May 1, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–10472 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DR–M

[Docket No. 80465–8065]

Foreign Availability Assessment; Nd:YAG Surgical Lasers

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of finding of foreign availability assessment.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes.

The OFA completed an assessment on Nd:YAG surgical lasers controlled under paragraph (b) of ECCN 1522A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1). The equipment that is controlled by ECCN 1522A includes equipment containing Nd:YAG lasers having an output wavelength of 1.06 micrometers and a continuous wave multimode output power exceeding 50 watts. Based on this assessment and following consultation with the Department of Defense and other appropriate agencies, the Department of Commerce has found foreign availability for this commodity rated at a continuous wave multimode output power not exceeding 175 watts.

FOR FURTHER INFORMATION CONTACT: Robert M. Lerner, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) has completed an assessment, pursuant to Part 391 of the Export Administration Regulations (15 CFR Part 391), on the foreign availability of *Nd:YAG surgical lasers* and has recommended a finding of foreign availability as defined by law. Based on this assessment, the Under Secretary for Export Administration has determined that there exists foreign availability of such equipment, within the meaning of section 5(f) of the Export Administration Act of 1979, as amended. Based on this determination, Export Administration is publishing regulations elsewhere in today's **Federal Register** that amend the national security export controls on these Nd:YAG surgical lasers so that individual validated licenses to destinations other than controlled countries will no longer be required for Nd:YAG surgical lasers with a rated continuous wave multimode output not exceeding 175 watts. The Bureau of Export Administration also will begin the process whereby the United States Government will work with COCOM member governments to reach agreement on an orderly change in the multilateral controls placed on such Nd:YAG surgical lasers when exported to controlled countries.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability at the above address.

Dated: May 6, 1988.

Irwin M. Pikus,

Director, Office of Foreign Availability.

[FR Doc. 88–10473 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Committee will convene a public meeting in conjunction with the Technical Advisory Group, May 16, 1988, 10 a.m., at the Council's office (address below), to work on the final details of the limited entry framework proposals, review a draft of the final report, and discuss methods for disseminating the proposals to the public. The public meeting will adjourn May 18 at 3:30 p.m.

For further information contact Mr. Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: May 6, 1988.

Richard H. Schaefer,

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

[FR Doc. 88–10414 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Kings Grant Inn, Danvers, MA, on May 18, 1988, at 10 a.m., adjourn at approximately 11:30 a.m., prior to an informational hearing (discussed below), reconvene May 19 at 9 a.m., and adjourn upon completion of agenda items.

The Council will discuss reports of the Groundfish and Scallop Committees (relative to gear); updates on environmental affairs, surf clams and ocean quahogs, large pelagics, the fluke and bluefish fishery management plans, and the Uniform Standards. There will also be a report by the ad hoc committee on the United States/Canada Free Trade Agreement, and a review of other fishery management and administrative matters. On May 19 at 1 p.m., the Council will convene an informational hearing on an import certification program proposed for groundfish.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Date: May 6, 1988.

Richard H. Schaefer,

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

[FR Doc. 88–10415 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

The Western Pacific Fishery Management Council's Crustacean Plan Monitoring Team will convene a public meeting, May 12, 1988, at 1:30 p.m., at the Council's Office (address below), to discuss the fishery management plan (FMP) for crustaceans in the Western Pacific region. The Team will: (1) Review the annual report of the Western Pacific lobster fishery for 1987; (2) review the year-to-date catch, effort, and activity data for the Northwestern Hawaiian Islands lobster fleet; (3) discuss frameworking the FMP, with particular reference to management options for emergency situations such as recruitment failure; (4) discuss local fleet activity in the fishery for deepwater shrimp, and (5) discuss data and research needs, as well as other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: May 6, 1988.

Richard H. Schaefer,

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

[FR Doc. 88–10416 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Co-Exclusive Patent License; Dow Corning Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Dow Corning Corporation, having a place of business in Midland, Michigan, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Synthetic Pheromone and Its Use in Monitoring and Controlling the Sweetpotato Weevil," U.S. Patent Application Serial Number 879,696. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10438 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Magainin Sciences Inc., having a place of business in New York, NY, an exclusive license in the United States and certain foreign countries to practice the invention entitled, "New Anti Inflammatory Agents", U.S. Patent Application No. 7–122,379. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10398 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent license; Molecular Vaccines Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Vaccines Inc. having a place of business in New York, N.Y., an exclusive license in the United States and certain foreign countries to practice the invention entitled "Method to Predict Antigenic Sites Recognized by T-Lymphocytes Such as for Design of Vaccines", U.S. Patent Application No. 7–005,885. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10439 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Warner-Lambert Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Warner-Lambert Company of Morris-Plains, NJ 07950, an exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6–865,055 (U.S. Patent 4,694,007, "Use of Trimetrexate as an Antiparasitic Agent"). The patent rights in this invention have be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10440 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Xoma Corporation having a place of business in Berkeley, CA, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Immunotoxins", U.S. Patent Application No. 7–105,172. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–10397 Filed 5–10–88; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber and Silk Blend Textile Products Produced or Manufactured in the Republic of Korea

May 6, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 12, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: In conformity with the Interim Category System, the 1988 limits for Categories 345 and 645/646 in Group II and Category 846 in Group IV are being adjusted under the current bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 161 published in the **Federal Register** on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 6, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 12, 1988, the directive of December 30, 1987 is amended to include adjustments to the previously established restraint limits for cotton, man-made fiber and silk blend textile products in the following categories, as provided under the

terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-month limit [1] (dozen)
Sublevel within Group II:	
345	69,053
645/646	3,382,457
Group IV:	
846	853,847

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10475 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Products Produced or Manufactured in the Republic of Korea

May 6, 1988.

AGENCY: Committee for Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 12, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 342, 433/434, 636, 641, 642 and 647/648 in Group II; and Category 845 in Group IV are being reduced for carryforward applied during the previous agreement period.

In conformity with the Interim Category System, the current limits for Categories 442, 447, 448, 642, and 647/648 in Group II are being adjusted under the current bilateral agreement. In addition, the 1988 limits for Categories 333/334, 335, 640-0, 640-OY (a sublevel of Category 640-0) and 641 erroneously included adjustments based on migration to the new category system and the limits are now being readjusted.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 161 published in the **Federal Register** on January 5, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

May 6, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on May 12, 1988, the directive of December 30, 1987 is amended to include adjustments to the previously established restraint limits for cotton, wool, man-made fiber and other vegetable fiber textile products in the following categories, under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-month limit [1]
Sublevels within Group II:	
333/334	72,976 dozen.
335	74,516 dozen.
342	74,967 dozen.
433/434	16,940 dozen of which not more than 12,933 dozen shall be in Category 433 and not more than 6,633 dozen shall be in Category 434.
442	45,202 dozen.
447	83,451 dozen.
448	31,803 dozen.
636	221,866 dozen.
640-0 [2]	[3] 2,561,715 dozen of which not more than 2,160,750 dozen shall be in Category 640-0Y.
641	967,342 dozen.
642	80,642 dozen.
647/648	1,164,660 dozen.
Group IV:	
845	2,266,535 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 640-0, only TSUSA numbers 381.3142, 381.3144, 381.3152, 381.3154, 381.3333, 381.9305, 381.9400, 381.9547, 381.9549, 381.9550, 381.9844, 384.2306, 384.2313 and 384.9127.

[3] In Category 640-0Y, only TSUSA numbers 381.3142, 381.3152, 381.9547, 381.9550 and 384.2306.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-10476 Filed 5-10-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.029H]

Notice Reopening the Closing Date for Transmittal of Applications for New State Grant Awards Under the Training Personel for the Education of the Handicapped Program for Fiscal Year 1988

Purpose: To increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications for State grants may be submitted by State educational agencies (SEAs). SEAs that have applied for either a new or a continuation grant for fiscal year 1988 are not eligible to apply for an additional State grant under this notice.

A notice inviting applications for this program was published on September 1, 1987 at 52 FR 32960. This notice is being published because several SEAs were not aware of their eligibility to apply for a program grant under the original announcement.

Deadline for Transmittal of Applications: July 6, 1988.

Applications Available: May 16, 1988.

Estimated Range of Awards: $50,000 to $85,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 9.

Average Project Period: 36 months.

Applicable Regulations: (a) The Training Personnel for the Education of the Handicapped Program, 34 CFR Part 319, 52 FR 25830 *et seq.*; and (b) the

Education Department General Administration Regulations, 34 CFR Parts 74, 75, 77, and 78.

FOR APPLICATIONS OR INFORMATION CONTACT: Norman D. Howe, U.S. Department of Education, Office of Special Education Programs, Division of Personnel Preparation, 400 Maryland Avenue, SW., (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1068.

Program Authority: 20 U.S.C. 1432.

Dated: May 6, 1988.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 88–10550 Filed 5–10–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided.

A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 19, 1988, at the Centre des Conderences, 19 Avenue Kleber, 75116, Paris, France, beginning at 9:30 a.m. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry technical subgroup which has been established by the IEA for the preparation of the sixth IEA Allocation Systems Test (AST–6). The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed:

1. Adoption of the agenda.
2. Finalization of the draft AST–6 Test Guide.
3. ISAG staffing.
4. Briefing sessions.
5. Demonstration of the voluntary offer computer system.
6. Other issues.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of Subcommittee A of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, May 5, 1988.

Eric J. Fygi,

Acting General Counsel.

Cleary, Gottlieb, Steen & Hamilton

May 3, 1988.

By Hand

Secretary of Energy,
U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Dear Sir: You will find enclosed a notice of a meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA), to be held in Paris, France, on May 19, 1988. This notice is being given in order to permit representatives of members of Subcommittee A to participate at a meeting of a joint government/industry Technical Sub-Group that has been established by the IEA for the preparation of the sixth IEA Allocation Systems Test.

This notice is being provided to you, in accordance with Section 5(C)(2) of the Voluntary Agreement and Plan of Action to Implement the International Energy Program, on behalf of the following companies:

Amerada Hess Corporation
Caltex Petroleum Corporation
Chevron Corporation
Conoco Inc.
Exxon Corporation
Mobil Oil Corporation
Phillips Petroleum Company
Texaco Inc.

Each of these companies is a participant in the aforesaid Voluntary Agreement and Plan of Action.

Sincerely,

Eugene M. Goott

Enclosure

cc: Ms. Monika Baumanns, Commission of the European Communities; Samuel M. Bradley, Esq., U.S. Department of Energy; Mr. Wayne H. Ferris, U.S. General Accounting Office; Frank Lipson, Esq., Federal Trade Commission, Ms. Saundra Wright, U.S Department of Energy; Angela Hughes, Esq., U.S. Department of Justice; Richard F. Scott, Esq., International Energy Agency; Ms. Ann Hollick, U.S. Department of State; Mr. George W. Staples, Mobil Oil Corporation; Mr. Roger C. McGee, Chevron Corporation.

May 3, 1988.

Notice of Meeting of Subcommittee A of the Industry Advisory Board

A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 19, 1988, at the Centre des Conferences Internationales, 19, avenue Kleber, 75116 Paris, beginning at 9:30 a.m. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting of a joint government/industry Technical Sub-Group which has been established by the IEA for the preparation of the sixth IEA Allocation System Test. The expected participants at the meeting are representatives of the governments of some IEA participating countries, representatives of the IEA Secretariat, and representatives of the following members of Subcommittee A: British Petroleum p.l.c.; Chevron Corporation; Japan Petroleum Development Association; Mobil Oil Corporation; Shell International Petroleum Company Limited

Representatives of other members of Subcommittee A may also participate. Representatives of the Directorate-General for Competition of the Commission of the European Communities may attend the meeting as observers. The meeting will be open to all members of Subcommittee A and to representatives of the Secretary of Energy, the Attorney General, and the Federal Trade Commission severally, to any United States Government employee designated by the Secretary of Energy, and to representatives of Committees of the Congress.

The Agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed:

Agenda

1. Adoption of the Agenda
2. Finalization of the Draft AST–6 Test Guide
3. ISAG Staffing
4. Briefing Sessions
5. Demonstration of the Voluntary Offer Computer System
6. Other Issues

[FR Doc. 88–10490 Filed 5–10–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Form EIA–714, "Annual Electric Power System Report" Survey

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments concerning the Department of Energy electric power survey Form EIA–714, "Annual Electric Power System Report."

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) solicits comments concerning proposed revisions to the electric power survey Form EIA–714 and 3-year clearance of the revised form. This data collection effort is jointly sponsored by the EIA and the Federal Energy Regulatory Commission (Commission).

DATE: Written comments must be submitted within 30 days of the publication of this notice.

ADDRESS: Send written comments to: Mr. Jorge Luna-Camara (EI–541), Energy Information Administration, Department of Energy, Mail Stop: 2G–090, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6553.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Jorge Luna-Camara at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

To fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the EIA is obliged to published, and otherwise make available to the public, high-quality statistical data that, as accurately as possible, reflect national and regional electric power supply and demand activity. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass every major electric power supply and demand activity in the United States. The Form EIA–714 collects information on system net generation, energy requirements, peak load, energy transfers, summer and winter peak load and energy forecasts, high voltage line data, and transmission maps.

The EIA sponsors 3 percent of this data collection effort, which is sponsored 97 percent by the Federal Energy Regulatory Commission. The EIA uses the data to provide the DOE and others with timely electric system data to facilitate analyses of electric power system reliability and adequacy; to prepare status reports on the electric utility industry; to monitor electric utility forecasts of loads and plans for expansion; and to obtain a comprehensive picture of energy generation transfers and load distribution. The information collected for the Commission is mandated by the Federal Power Act, which requires the Commission to analyze power system operation in the course of its regulatory functions which include general electric power and other licensing provisions; interconnection and coordination of facilities; disposition on property, etc. (merger provisions); rate and charges; furnishing of adequate service; and interconnection and wheeling.

II. Current Actions

In keeping with its mandated responsibilities, the EIA proposes that the Office of Management and Budget clear for 3 years the electric power data collection Form EIA–714. The EIA and the Commission are proposing the following changes for the Form EIA–714: (1) Replace the reporting of the net capability connected to load, net capability not connected to load, and integrated net demand on prime mover by plant at the time of the system peak with integrated net demand on each plant at the hour of the system peak; (2) report line load or load flow simulations reasonably representing system conditions for the summer and winter peak load periods only, eliminating the reporting of an off-peak period; (3) increase the threshold for the voltage levels that determine which transmission lines must be reported; and (4) permit substitution of existing general maps and single-line schematic diagrams used by the respondent instead of requiring new system maps and diagrams. Additional minor changes to the form have been made and instructions have been clarified to assist the respondent in completing the form.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed form within 30 days of the publication of this notice. The following guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, what instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will you require to complete and submit the form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in this survey.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of this survey; they also will become a matter of public record.

Statutory Authority

Sections 5 (a) and (b), 13 (a) and (b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974 as amended (15 U.S.C. 764 (a) and (b), 772 (a) and (b), and 790a).

Issued in Washington, DC, May 5, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–10489 Filed 5–10–88; 8:45 am]

BILLING CODE 6450–01–M

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are not included in these notices.

During the second quarter of fiscal year 1988 (January 1, 1988 through March 31, 1988), changes were made to the October 1, 1987 inventory of DOE information collections, which was published in the **Federal Register**, 52 FR 43787 (November 16, 1987). Changes during the first quarter of the fiscal year were published on February 10, 1988, 53 FR 3914.

The second quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control

or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-231, Forrestal Building, U.S. Department of Energy, Washington, DC, 20585, (202) 586-8800.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), and 790a).

Issued in Washington, DC May 5, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Federal Energy Regulatory Commission			
FERC-543*	Gas Pipeline Rates: Purchased Gas Adjustment Tracking.	19020152	01/31/91	

*Does not utilize a structured form.

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Economic Regulatory Administration			
ERA-750R *	Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19030070	04/30/91	10 CFR 463.
	Energy Information Administration			
EIA-1	Weekly Coal Monitoring Report—General Industries (Standby Form)	19050167	03/31/89	
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants.	19050167	03/31/89	
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/89	
EIA-5	Coke Plant Report—Quarterly	19050167	03/31/89	
EIA-6	Coal Distribution Report	19050167	03/31/89	
EIA-7A	Coal Production Report	19050167	03/31/89	
EIA-7A(Supp)	Coal Production Report (Supplement)	19050167	03/31/89	
EIA-20	Weekly Coal Monitoring Report—Coal-Burning Electric Utilities (Standby Form)	19050167	03/31/89	
EIA-191	Underground Natural Gas Storage Report	19050175	12/31/90	
EIA-254	Semiannual Report on Status of Reactor Construction	19050160	06/30/88	
EIA-400	Survey of Surplus Natural Gas Supplies	19050175	12/31/90	
EIA-627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/90	
EIA-851	Domestic Uranium Mining Production Report	19050160	06/30/88	
EIA-858	Uranium Industry Annual Survey	19050160	06/30/88	10 CFR 761.8.
	Federal Energy Regulatory Commission			
FERC-16AT*	Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/90	By FERC Order.
FERC-314A*	Application For Small Producer Exemption	19020006	02/28/91	18 CFR 157.40(b)(4), 250.10.
FERC-500*	Application for License for Hydropower Projects Greater Than 5MW.	19020058	03/31/91	18 CFR 4.30, 4.32, 4.33, 4.38, 4.40, 4.41, 4.50, 4.51, 4.200-.202.
FERC-505*	Application for License, Projects 5 Megawatts or less	19020115	10/31/90	18 CFR Part 4.
FERC-512*	Application for Preliminary Permit	19020073	07/31/88	18 CFR 4.31-.33, 4.81-.82.
FERC-532*	Gas Producer Rate: Filing	19020055	03/31/91	18 CFR 2.56(a); 154.91-.110; 157.301; 250.8-9, 250.14, 2.56a.
FERC-537*	Gas Pipeline Certificates: Open Access/Non-discriminatory Transportation.	19020060	07/31/88	18 CFR 2.79; 157.5-.21, .100, .201-.218; 159.1; 284.107, .127, .221.
FERC-538*	Gas Pipeline Certificate: Initial Service	19020061	12/31/90	18 CFR 156.3-.5.
FERC-539*	Gas Pipeline Certificate: Import/Export Related	19020062	03/31/91	18 CFR 153.
FERC-541*	Gas Pipeline Certificate: Curtailment Plan	19020066	03/31/91	18 CFR 2.78, 281.
FERC-547*	Gas Pipeline Rates: Refund Obligations	19020084	06/30/88	18 CFR 154, 270, 273.
FERC-556*	Cogeneration and Small Power Production	19020075	08/31/88	18 CFR 292.
FERC-566*	Report of Utility's Twenty Largest Purchasers	19020114	06/30/88	18 CFR 46.3.
FERC-580*	Fuel Purchase Practices	19020137	03/31/90	
FERC-593*	Natural Gas Contract Summary Information	19020149	04/30/88	

*Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Energy Information Administration				
None	None.			

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
Energy Information Administration				
EIA-97	Boiler Order Report	19050167	03/31/88	
Federal Energy Regulatory Commission				
EIA-194	Monthly Alternate Fuel/Incremental Price Monitoring Report.	19020142	01/31/88	
EIA-714(1)	Annual Electric Power System Report	19020140	03/31/88	

DOE numbers as previously listed	Changes
Forms	Revisions
CE-63A/B	Minor modification to reflect that CE is form's sponsor. OMB number changed from 1905-0172 to 1901-0292. Approved through 12/31/89.
EIA-176	Minor modifications to form and approved through 12/31/90.
EIA-857	Minor modifications to form and approved through 12/31/90.
RW-859	Minor modifications to form and approved through 12/31/90.
FERC-1	Changes in regulations.
FERC-2	Do.
FERC-2A	Do.
FERC-534*	Do.
FERC-542*	Do.
FERC-577*	Do.
FERC-582*	Do.
FERC-583*	Do.

*Does not utilize a structured form.

[FR Doc. 88-10488 Filed 5-10-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF87-481-001 et al.]

T.E.S. Filer City Station et al. Limited Partnership; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following fillings have been made with the Commission:

1. T.E.S. Filer City Station Limited Partnership

[Docket No. QF87-481-001]

May 6, 1988.

On April 19, 1988, T.E.S. Filer City Station Limited Partnership (Applicant), of One Allen Center, Suite 3445, 500 Dallas Street, Houston, Texas 77002 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal of April 19, 1988 constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Filer City, Michigan. The facility as originally proposed included a coal-fired fluidized bed boiler and condensing steam-turbine. The net electric power production capacity of the facility as originally proposed was to be 50 megawatts.

By order issued on August 25, 1987, the Commission granted certification of the previous facility as a qualifying cogeneration facility (40 FERC ¶ 62,222).

The current recertification is requested due to a change in name of the applicant from the Tondu Energy System Filer City Station Limited Partnership to the T.E.S. Filer City Station Limited Partnership and to a proposed 50% utility participation in the facility. In addition the configuration of the facility has changed from a single fluidized bed boiler to two spreader stoker boilers. The net electric power production capacity of the facility will increase to 54MW. Installation of the facility will begin in the summer of 1988. All other facilities' characteristics remain unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Western Area Power Administration v. Pacific Gas & Electric Company, The Northern California Power Agency, and the City of Alameda, Healdsburg, Ukiah, Santa Clara, Lodi, and Lompoc

[Docket No. EL88-22-000]

May 6, 1988.

Take notice that on April 28, 1988, Western Area Power Administration (Western) tendered for filing pursuant to Rules 206 and 207 of the Commission's Rules of Procedure a Complaint against Pacific Gas & Electric Company (PG&E), The Northern California Power Agency (NCPA), and the Cities of Alameda, Healdsburg, Ukiah, Santa Clara, Lodi, and Lompoc (Cities). Western petitions the Commission to issue a declaratory order resolving a controversy over a rate filed with the Commission. Western states that because of the controversy over the rate, Western has not received payment for surplus energy sold to the Cities and delivered to PG&E for transmission to the Cities during the months of May through September in 1982.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: June 6, 1988, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint are also due on or before June 6, 1988.

3. Kansas City Power & Light Company

[Docket No. ER88-379-000]

May 9, 1988.

Take notice that on May 2, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Wholesale Firm Power Contract, between KCPL and the City of Slater, Missouri dated April 12, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term, a modified rate design for firm power service, and the termination of a Transmission Service Agreement.

KCPL requests an effective date of June 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: May 23, 1988, in accordance with Standard paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER88-377-000]

May 9, 1988.

Take notice that on May 2, 1988, Florida Power & Light Company (FPL) tendered for filing eight (8) revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach is May 29, 1988. The proposed effective date for the contract demands for the City of Jacksonville Beach, and the City of Green Cove Springs is June 1, 1988.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. UNITIL Power Corporation

[Docket No. ER88-375-000]

May 9, 1988.

Take notice that on April 29, 1988, UNITIL Power Corporation tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

A. Statement of all sales and billing transactions for the period October 1, 1986 through December 31, 1987 along with the actual costs incurred by Power Corp. by FERC account.

B. UNITIL Power Corp. rates billed from October 1, 1986 to December 31, 1987 and supporting rate development.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER88-380-000]

May 9, 1988.

Take notice that on May 2, 1988, Minnesota Power & Light Company (MP&L) tendered for filing a proposed Interchange Service Agreement with Superior Water, Light & Power Company, (SWL&P) and Supplement No. 1 thereto, both of which are dated March 31, 1988. MP&L states that this agreement supersedes the existing interconnection agreement between MP&L and SWL&P. In addition, it provides for reductions in MP&L's rate for firm power service to SWL&P, and for limitations on future increases in such rate between July 1, 1987 and December 31, 1999. MP&L has requested waiver of the Commission's regulations in order to make the Interchange Service Agreement and Supplement No. 1 thereto effective on July 1, 1987, the date on which the reduction in the rate for firm power service is intended to be implemented.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Yankee Atomic Power Company

[Docket No. ER88-202-002]

May 9, 1988.

Take notice that on April 14, 1988, Maine Yankee Atomic Power Company (Maine Yankee) tendered for filing a compliance filing pursuant to Ordering Paragraph (B) of the Commission's March 15, 1988 Order in the above-captioned docket. The compliance filing contains a revised rate schedule setting forth revised rates to reflect the recovery of decommissioning costs for the Maine Yankee plant over the plant's remaining NRC-licensed life. In its January 15, 1988 rate application, Maine Yankee proposed to collect decommissioning costs for the plant over a period shorter than the NRC-licensed life of the plant, and had filed a decommissioning cost rate schedule reflecting that proposal. In its March 15 Order, the Commission reflected that aspect of Maine Yankee's filing, and ordered Maine Yankee to refile within 30 days, revised rates "reflecting recovery of decommissioning costs over the nuclear unit's remaining life." Maine Yankee has petitioned the Commission for rehearing on this issue, but has made a compliance filing in accordance with the 30-day deadline stated in the Commission's March 15 Order. The revised rates in the compliance filing result in a total annual collection for decommissioning costs of $9,793,905, compared with $14,466,467 contained in the January 15 rate filing.

Copies of this filing were served upon Maine Yankee's jurisdictional customers and secondary purchasers of its power, as well as the utility regulatory authorities in each state having jurisdiction over such customers.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Public Service Company of New Mexico

[Docket No. ER88-376-000]

May 9, 1988.

Take notice that on May 2, 1988, Public Service Company of New Mexico (PNM) tendered for filing an Amended and Restated Contract for Electric Service between PNM and Texas-New Mexico Power company (TNP) and two related contract amendments, Amendment No. 1 to Service Schedule G and a new Service Schedule J to the PNM-TMP Interconnection Agreement. The Amended and Restated Contract for Electric Service implements on a permanent basis the provisions of Amendment No. 6 to the PNM-TNP Contract for Electric Service and the Principles for Modification to said Contract for Electric Service, which were accepted for filing by the Commission in Docket No. ER88-269-000, effective January 1, 1988. The Amended and Restated Contract for Electric Service allows TNP to reduce the amount of power for which TNP must pay and provides for a reduction in the energy rate charged for energy taken during off-peak periods. Under Amendment No. 1 to Service Schedule G, PNM will return to TNP a portion of the firm transmission capacity provided by TNP to PNM in certain of TNP's transmission facilities. Service Schedule

] sets forth terms and conditions for economy energy transactions between PNM and TNP at prices which reflect current market conditions or the seller's fully embedded cost of generation.

PNM has requested that the notice requirements of 18 CFR 35.3 be waived as provided for in § 35.11, and that the Commission accept for filing the Amended and Restated Contract for Electric Service, Amendment No. 1 to Service Schedule G, and the new Service Schedule J, with an effective date of May 1, 1988.

Copies of the Amended and Restated Contract for Electric Service, Amendment No. 1 to Service Schedule G, and Service Schedule J have been served upon TNP and the New Mexico Public Service Commission.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Louisville Gas and Electric Company

[Docket No. ER88-324-000]

May 9, 1988.

Take notice that on May 3, 1988, Louisville Gas and Electric Company (Louisville) tendered for filing an amended filing of the Interconnection Agreement between Louisville and Wabash Valley Power Association, Inc. (Wabash Valley) dated February 3, 1988.

The purpose of this filing is to provide the parties with a coordinated, interconnected operation that provides for the sale, purchase and interchange of electric power.

Copies of the filing were served on Wabash Valley and the Public Service Commission of Kentucky.

The Interconnection Agreement provides for service schedules that are designated:

I. Service Schedule A—Emergency Energy
II. Service Schedule B—Interchange Energy
III. Service Schedule C—Seasonal Power
IV. Service Schedule D—Short Term Power
V. Service Schedule E—Limited Term Power
VI. Service Schedule F—Diversity Power

Comment Date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER88-378-000]

May 9, 1988.

Take notice that on May 2, 1988, Florida Power & Light Company (FPL) tendered for filing revised Cost Support Schedules C, F and G (together with cost Support Schedule F Supplements) that: (1) Support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Interchange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and (2) support the revised Capacity Reservation Charges for sales under FPL's Agreements to provide Short Term Power and Energy with Utilities Commission, City of New Smyrna Beach and City of Key West and revised Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Schedule B and Service Schedule B-S and FPL's Agreements to provide Short Term Power and Energy and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1988, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 23, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10539 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-366-000 et al.]

Sabine Pipeline Co. et al.; Natural Gas Certificate Filings

May 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Sabine Pipe Line Company

[Docket No. CP88-366-000]

May 5, 1988.

Take notice that on April 27, 1988, Sabine Pipe Line Company (Sabine), P.O. Box 60252, New Orleans, Louisiana 70160, filed in Docket No. CP88-366-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amax Oil & Gas, Inc. (Amax), under Sabine's blanket certificate issued in Docket No. CP86-522-000 pursuant to section 7 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.

Specifically, Sabine requests authority to transport up to 3,000 Mcf of natural gas on a peak day for Amax pursuant to a transportation agreement dated March 1, 1988 (Agreement). The Agreement provides for a receipt point at South Timbalier Block 200, offshore Louisiana, and a redelivery point at the interconnect with Trunkline Gas Company at South Timbalier Block 147, offshore Louisiana.

Sabine further states that the maximum daily and annual quantities would be 3,000 Mcf and 730,000 Mcf, respectively. Service under § 284.223(a) commenced on March 1, 1988, as reported in Docket No. ST88-2896-000.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88-364-000]

May 6, 1988]

Take notice that on April 26, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-364-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act

(18 CFR 157.205) for authorization to provide transportation for CEPEX, Inc. (CEPEX), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 40,000 MMBtu of natural gas per day, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for CEPEX, and end-user, from 40 receipt points located in Oklahoma, Texas, Kansas, and New Mexico to an interconnection with CEPEX in Gage County, Nebraska. Natural anticipates transporting, on an average day, 29,000 MMBtu. Natural states that based on that average day figure, the annual volume it anticipates transporting is 10,585,000 MMBtu.

Natural states that the transportation of natural gas for CEPEX commenced on March 1, 1988, as reported in Docket No. ST88–3129, for a 120-day period ending June 28, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP88–347–000]

May 6, 1988.

Take notice that on April 20, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88–347–000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to upgrade the West Chandler Community Gin Tap located in Maricopa County, Arizona, to a meter station in order to permit the measurement and delivery of additional volumes of natural gas to Southwest Gas Corporation (Southwest) for resale to consumers in the City of Chandler, Arizona, and environs, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that Southwest requested additional volumes of natural gas that will be utilized to serve additional commercial space heating and firm industrial natural gas requirements of consumers in the City of Chandler, and environs, in Maricopa County, Arizona. Initial deliveries of natural gas are requested to begin by the third quarter of 1988.

El Paso also states that Southwest will install other minor related facilities as needed for ultimate distribution of the requested additional volumes of natural gas for industrial and commercial use in the City of Chandler and environs. The estimated cost of the metering facilities is $77,849. El Paso proposes to finance the cost of the facilities proposed herein through internally generated funds.

Comment date: June 20, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP88–349–000]

May 9, 1988.

Take notice that on April 21, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88–349–000 a request pursuant to Sections 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate 17 sales taps for the delivery of gas to end users under the certificates issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines as detailed in the appendix below. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries.

Comment date: June 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Customer	Location	Approximate quantity to be sold (Mcf)		End use	Estimated cost[1]
		Peak day	Annual		
RMS, Inc	Wallace Co., KS	29	960	Irrigation	$1,150
Ted Woodbury	Wichita Co., KS	18	600	do	850
Vernon Dechert	Sheridan Co., KS	26	880	do	850
Lee Buller	Hamilton Co., NE	140	1,200	Small commercial	3,200
Karl Berndt	Sheridan Co., KS	2	120	Domestic	850
J.V.M. Farms	do	26	880	Irrigation	850
Floyd Jacobsen	Fillmore Co., NE	30	1,000	do	1,150
Aetna Life Insurance Company	Thomas Co., KS	24	800	do	850
Do	do	24	800	do	850
Do	do	48	1,600	do	1,150
Gregory L. Carttar	Dawson Co., NE	2	120	Domestic	850
Donald Haldeen	Keith Co., NE	14	480	Irrigation	850
Ray Welsh	Wallace Co., KS	36	1,200	do	1,150
Claude Brill	Edwards Co., KS	24	800	do	850
Frank Whitham	Wichita Co., KS	14	480	do	850
Do	do	14	480	do	850
Ralph Walker	Wallace Co., KS	24	800	do	850

[1] Customers reimburse to K N a portion of these costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$400, Colorado—$400 and Wyoming—$500.

5. Natural Gas Pipeline Company of America

[Docket No. CP88-365-000

May 9, 1988.

Take notice that on April 26, 1988, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-365-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Tejas Power Corporation (Tejas), a marketer of natural gas, under the certificate issued in Docket No. CP86-582-000 pursuant to section 7 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.

NGPL proposes to transport on an interruptible basis up to 50,000 MMBtu per day and up to 10,950,000 MMBtu per year for Tejas, plus any additional volumes accepted pursuant to the overrun provisions of NGPL's Rate Schedule ITS. It is stated that NGPL would receive the gas at 13 receipt points located in Texas, offshore Texas, and offshore Louisiana. NGPL states that it would deliver the gas for Tejas' account to Columbia Gulf Transmission Company in Vermilion Parish, Louisiana who would then redeliver the gas to intrastate pipelines in Louisiana. It is indicated that the transportation service would have a primary term ending March 1, 1990, and would continue on a monthly basis thereafter.

NGPL states that it filed an initial report in Docket No. ST88-3133-000, reporting that the service commenced March 5, 1988, under the authomatic authorization provisions of § 284.223(a) of the Commission's Regulations. It is also stated that no construction of facilities would be required to effect the transportation service. NGPL proposes to charge Tejas the applicable rate under NGPL's currently effective Rate Schedule ITS.

Comment date:

June 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP88-356-000]

May 9, 1988.

Take notice that on April 22, 1988, Tennessee Gas Pipeline Company, (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-356-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) and the Natural Gas Policy Act (NGPA) (18 CFR 284.223) for authorization to provide a transportation service for Hadson Gas Systems, Inc., (Hadson) a marketer, under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated March 18, 1988, it proposes to transport natural gas for Hadson from points of receipt located in Cameron Parish, Louisiana, and Alan Parish, Louisiana. The points of delivery are located in the states of Mississippi and Pennsylvania.

The Applicant further states that the peak day quantities would be 50,000 dekatherms, the average daily quantities would be 10,000 dekatherms, and that the annual quantities would be 3,650,000 dekatherms. Service under § 284.223(a) commenced March 19, 1988, as reported in Docket No. ST88-3207 (filed April 15, 1988).

Comment date: June 23, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the 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,

Acting Secretary.

[FR Doc. 88-10540 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-152-000 and TQ88-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

May 6, 1988.

Take notice that on May 2, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 4
Second Revised Sheet No. 7
Second Revised Sheet No. 8
Third Revised Sheet No. 11
Fourth Revised Sheet No. 12
First Revised Sheet No. 14
Second Revised Sheet No. 17
First Revised Sheet No. 18
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 29
First Revised Sheet No. 44
First Revised Sheet No. 45
Second Revised Sheet No. 46
Third Revised Sheet No. 47
First Revised Sheet No. 47A
First Revised Sheet No. 48
First Revised Sheet No. 49
Third Revised Sheet No. 50
Second Revised Sheet No. 50A
First Revised Sheet No. 73

These tariff sheets are proposed to become effective June 1, 1988. Alabama-Tennessee states that the purpose of this filing in part is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee further states that the instant filing modifies Sections 20 and 21 of its tariff to conform with the requirements of Order No. 483. According to Alabama-Tennessee, it has also reflected the elimination of all references to incremental pricing and made other minor technical corrections to its tariff.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such 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, 385.214). All such motions or protests should be filed on or before May 13, 1988. 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,

Acting Secretary.

[FR Doc. 88-10495 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-438-000]

Amoco Energy Trading Corp.; Application for a Blanket Certificate With Pregranted Abandonment

May 9, 1988.

Take notice that on May 2, 1988, Amoco Energy Trading Corporation (Applicant), of 200 East Randolph Drive, Chicago, Illinois 60680, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 25, 1988, 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 385.211, 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10496 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-144-000]

ANR Pipeline Co.; Tariff Filing

May 6, 1988.

Take notice that ANR Pipeline Company ("ANR") on April 29, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, implement the provisions of Order Nos. 483 and 483-A, related to the Commission's new PGA regulations. Further, the filing reflects Order No. 478, which revoked the Commission's incremental pricing regulations under the NGPA. Finally, the filing institutes a flexible PGA mechanism.

ANR states that on April 12, 1988, the Commission granted ANR's request for a waiver of certain filing requirements under Order No. 483. As a result of the April 12 Order, ANR received a waiver from filing an Initial Current Purchased Gas Cost Adjustment to be effective June 1, 1988 and its first scheduled Quarterly Current Purchased Gas Cost Adjustment to be effective August 1, 1988.

Copies of the filing have been served upon ANR's customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1988. 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,

Acting Secretary.

[FR Doc. 88-10497 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-147-000 and TQ88-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance With Order No. 483

May 6, 1988.

Take notice that on May 2, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

Rate Schedule No. X-26, Originial Volume No. 3
2nd Revised 45th Revised Sheet No. 185
Rate Schedule No. G-2, First Revised Volume No. 1
2nd Revised 46th Revised Sheet No. 4

These tariff sheets reflect AER's initial PGA filing made under the Commission's transitional rules of Order No. 483.

The proposed changes would increase AER's system cost by $5,802 and its revenue from jurisdictional sales and service by $376 for the month of June, 1988 as adjusted.

In addition to the above tariff sheets AER also submits for filing the following tariff sheets to revise its PGA clause in accordance with Order No. 483 effective June 1, 1988.

Rate Schedule No. X-26, Origional Volume No. 3	Rate Schedule G-2, First Revised Volume No. 1
Revised PGA	
6th Revised Sheet No. 187.	6th Revised Sheet No. 12A
5th Revised Sheet No. 187A.	8th Revised Sheet No. 12B
5th Revised Sheet No. 187B.	9th Revised Sheet No. 12C
7th Revised Sheet No. 187C.	10th Revised Sheet No. 12D
4th Revised Sheet No. 187D.	6th Revised Sheet No. 12E
6th Revised Sheet No. 188.	5th Revised Sheet No. 12F
5th Revised Sheet No. 188A.	

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 Sections 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 May 13, 1988. 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,

Acting Secretary.

[FR Doc. 88-10498 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-157-000 and TQ88-1-61-000]

Bayou Interstate Pipeline System; Changes in Rates

May 6, 1988.

Take notice that on May 2, 1988, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) the tariff sheets listed on attached Appendix A to be effective June 1, 1988.

Bayou states the purpose of the filing is to implement a revised Section 15 Purchased Gas Cost Adjustment (PGA) of the General Terms and Conditions of its Tariff. The revised Procedures incorporate Sections 154.301 through 154.310 of the Commission's Regulations.

Bayou further states that it is filing to restate its existing rates effective June 1, 1988, consistent with Schedule Q1 of report Form No. 542-PGA.

A copy of the filing is being mailed to Bayou's jurisdictional sales customer and interested state regulatory agenices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before May 13, 1988. Protests will be considered by the Commission in determing 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,

Acting Secretary.

Proposed Tariff Sheets

FERC Gas Volume No. 1

Second Revised Sheet No. 1
Fifth Revised Sheet No. 4
Third Revised Sheet No. 50
Second Revised Sheet No. 71
First Revised Sheet No. 72
First Revised Sheet No. 73
First Revised Sheet No. 74
Second Revised Sheet No. 75
Third Revised Sheet No. 76
Second Revised Sheet No. 77
Fourth Revised Sheet No. 78
Second Revised Sheet No. 79
First Revised Sheet No. 80
Original Revised Sheet No. 81
Original Revised Sheet No. 82
Original Revised Sheet No. 83

[FR Doc. 88-10499 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-148-000 and TQ88-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 9, 1988.

Take notice that Equitrans, Inc. (Equitrans) on May 2, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1988.

First Revised Sheet No. 10
First Revised Sheet No. 14
First Revised Sheet No. 172
First Revised Sheet No. 173
First Revised Sheet No. 174
First Revised Sheet No. 175
First Revised Sheet No. 176
First Revised Sheet No. 177

Equitrans states that the filing is made pursuant to § 154.310 and § 154.308 of the Commission's Regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Original Volume No. 1, Section 19, of its General Terms and Conditions of its FERC Gas Tariff.

The current Purchase Gas Adjustment to Rate Schedule GS-1 is an increase of $0.6833 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $3.6201 per dth, to be effective June 1, 1988.

The current Purchase Gas Adjustment to Rate Schedule PLS is an increase of $0.1387 per dekatherm (dth). This change results in a current estimated average cost of gas in this filing of $2.1943 per dth, to be effective June 1, 1988.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket CP86-676-000, et al.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or 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. All such motions or protests should be filed on or before May 16, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10541 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

May 6, 1988.

Take notice that on May 2, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission Sixth Substitute Twenty-Fifth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness May 1, 1988.

According to Granite State, the proposed rate changes are applicable to the jurisdictional sales services rendered to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Granite State further states that the rate changes are made to track changes in suppliers' rates that have occurred since it filed its out-of-cycle purchased gas cost adjustment, for effectiveness April 1, 1988. Granite State states that the proposed rates reflect a reduction in the prices for spot market purchases. According to Granite State its revised purchased gas costs and rates result in an annual reduction of approximately $1,900,000 in the rates for sales to Bay State and an annual reduction of $400,000 in the rates for sales to Northern Utilities.

Granite State further states that copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine and Massachusetts and New Hampshire.

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 Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. 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,

Acting Secretary.

[FR Doc. 83-10500 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-158-000 and TQ88-1-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

May 6, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on May 2, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

First Revised Sheet No. 5
First Revised Sheet No. 8
Second Revised Sheet No. 11
Eighth Revised Sheet No. 52
Sixth Revised Sheet No. 53
Ninth Revised Sheet No. 54
Sixth Revised Sheet No. 54–A
First Revised Sheet No. 54–A1
Seventh Revised Sheet No. 55
Fourth Revised Sheet No. 56
Third Revised Sheet No. 56–A
Third Revised Sheet No. 56–A1
Fourteenth Revised Sheet No. 57(i)
Fourteenth Revised Sheet No. 57(ii)
First Revised Sheet No. 57(v)

Original Volume No. 2

Third Revised Sheet No. 53–A
Ninth Revised Sheet No. 53–B
Sixth Revised Sheet No. 53–C
Sixth Revised Sheet No. 53–D
Third Revised Sheet No. 53–E
Third Revised Sheet No. 53–E1
Original Sheet No. 53–E2
Second Revised Sheet No. 78–A
Fifth Revised Sheet No. 78–B
Sixth Revised Sheet No. 78–C
First Revised Sheet No. 78–C1
First Revised Sheet No. 78–D
Third Revised Sheet No. 78–E
Original Sheet No. 78–E1
First Revised Sheet No. 466
First Revised Sheet No. 467
First Revised Sheet No. 468
First Revised Sheet No. 469
First Revised Sheet No. 470
First Revised Sheet No. 471
First Revised Sheet No. 472
First Revised Sheet No. 473

The above referenced tariff sheets were filed pursuant to FERC Order No. 483—Revisions to the Purchased Gas Adjustment Regulations. In compliance with Section 154.310—Transitional Rules, Great Lakes revised the PGA language in First Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, to reflect the changes pertaining to the requirement to file a comprehensive annual PGA filing and three additional quarterly filings as opposed to the semiannual filings presently required. In addition, language has been incorporated addressing interim PGA filings, supplier refunds and assessment of past performance also required by Order 483.

Fourteenth Revised Sheet No. 57(i), Fourteenth Revised Sheet No. 57(ii) and First Revised Sheet No. 57(v) reflect projected changes in the price of natural gas purchased by Great Lakes from TransCanada PipeLines Limited for resale to certain customers and for volumes purchased for company use gas.

Any person desiring to be heard or to protect said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88–10501 Filed 5–10–88; 8:45 pm]

BILLING CODE 6717–01–M

[Docket Nos. RP88–153–000 and TQ88–1–53–000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that K N Energy, Inc., on May 2, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 to be effective June 1, 1988. This filing revises K N's Purchased Gas Adjustment (PGA) Clause (Section 19) and is made pursuant to Order No. 483 and 483–A. The filing also proposes changes in K N's FERC Gas Tariff to adjust the rates charged to its jurisdictional customers in accordance with the revised PGA clause. The proposed rate changes would increase the commodity rate under each of K N's jurisdictional rate schedules by .69¢ per Mcf.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10502 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–137–000 and TQ88–1–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

May 9, 1988.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on May 2, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective June 1, 1988.

First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet No. 39
Third Revised Sheet No. 40
Third Revised Sheet No. 41

Kentucky West states that there is no change in rates and that this filing is made to conform to the Commission requirements included in FERC Orders No. 483 issued November 10, 1987, and No. 483–A issued March 2, 1988.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions and upon each party on the service list of Docket No. RP86–52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.211 and 385.214 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 May 16, 1988. 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,

Acting Secretary.

[FR Doc. 88–10542 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88-143-000 and TQ88-1-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

May 6, 1988

Take notice that on April 29, 1988, MIGC, Inc. (MIGC) tendered for filing revised Tariff Sheet Nos. 26 through 32 to its FERC Gas Tariff, Original Volume No. 1. MIGC states that the purpose of these proposed tariff changes is to revise the PGA provisions of its tariff to conform with the requirements of the Commission's new PGA regulations promulgated by Order No. 483, and to submit its first quarterly PGA filing pursuant to such revised tariff provisions and regulations. All of the revised tariff sheets are proposed to become effective June 1, 1988.

Forty-Seventh Revised Sheet No. 32 included in the filing reflects both a revised format in MIGC's "Statement of Rates" to conform with the Commission's new PGA rules, and a quarterly PGA decrease of ($.0063) per MMBtu. MIGC states that, in accordance with Section 154.310(c)(4) of the Commission's regulations, the surcharge adjustment included on Revised Sheet No. 32 reflects a continuation of the surcharge proposed by MIGC to become effective May 1, 1988, in its last semi-annual PGA filing at Docket No. TA88-2-47-000.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 13, 1988. 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 the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10504 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-140-000 and TQ88-1-5-000]

Midwestern Gas Transmission, Co.; Tariff Filing

May 6, 1988.

Take notice that on April 29, 1988, Midwestern Gas Transmission Company, (Midwestern) tendered for filing the following tariff sheets to Original Volume I of its FERC Gas Tariff to be effective June 1, 1988:

Original Volume No. 1

Second Revised Sheet No. 1
Thirty-Fourth Revised Sheet No. 5
Thirtieth Revised Sheet No. 6
First Revised Sheet No. 160
Third Revised Sheet No. 161
Third Revised Sheet No. 162
Fifth Revised Sheet No. 163
Fourth Revised Sheet No. 164
First Revised Sheet No. 164A
Third Revised Sheet No. 165
Second Revised Sheet No. 165A
First Revised Sheet No. 165B
Third Revised Sheet No. 166
Fourth Revised Sheet No. 167
Sixth Revised Sheet No. 168
Fourth Revised Sheet No. 169
Third Revised Sheet No. 169A
Second Revised Sheet No. 169B
First Revised Sheet No. 169C
First Revised Sheet No. 169D

Midwestern states that, pursuant to Order 483, it is revising the Purchased Gas Adjustment clause of its tariff, Article XXII and Article XXVIII of the General Terms and Conditions, to conform to §§ 154.301-154.310 of the Commission's Regulations. Midwestern is also restating its currently effective rates pursuant to § 154.310 of the Commission's regulations; however, the rates have not been changed.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons 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, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1988. 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 Cashell,

Acting Secretary.

[FR Doc. 88-10503 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-146-000 and TA88-3-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

May 6, 1988.

Take notice that on May 2, 1988 Mississippi River Transmission Corporation (MRT) tendered for filing the tariff sheets listed on the attached Appendix A to its FERC Gas Tariff, Second Revised Volume No. 1.

MRT states the filing is being submitted pursuant to its revised Purchased Gas Cost Adjustment (PGA) tariff provisions to track pipeline and producer cost changes. MRT states that the tariff sheets tendered reflect substantial changes to its currently effective PGA tariff provisions to comply with the requirements of Commission Order No. 483 issued November 10, 1987. In addition to the tariff sheets required by Order No. 483, the instant filing also contains certain other tariff revisions necessary to conform other sections of MRT's tariff to the new PGA section.

MRT states the impact of the filed changes upon MRT's Rate Schedule CD-1 is an increase of $.0521 per Mcf in the demand charge D-2 and a decrease in the commodity charge of $.2552 per Mcf. The filing reflects no change in demand charge D-1. The single part rate under Rate Schedule SGS-1 reflects a decrease of $.2031 per Mcf. The aggregate cost impact of such rate changes on MRT's jurisdictional customers, when applied to quarterly billing determinants, is a decrease of $3.2 million.

MRT states the filing also contains alternate tariff sheets reflecting the recovery of take-or-pay charges incurred from Natural Gas Pipeline Company of America (NGPL) in Docket No. RP88-94. MRT states that because NGPL's filing contained alternate tariff sheets reflecting two different methods of take-or-pay flow-through, MRT's filing also contains alternate tariff sheets reflecting take-or-pay flow-through. MRT indicates that one flow-through method utilized by NGPL is a form of the cumulative purchase deficiency method proposed in Order No. 500. MRT states the application of the cumulative deficiency method to MRT is inappropriate. Thus MRT has submitted a third tariff sheet reflecting its preferred D-1 flow-through

methodology of take-or-pay charges.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. 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,

Acting Secretary.

Mississippi River Transmission Corporation

FERC Gas Tariff, Second Revised Volume No. 1

Twenty-Third Revised Sheet No. 4
Original Sheet No. 4A.1
Alternate Original Sheet No. 4A.1
Substitute Alternate Original Sheet No. 4A.1
Fifth Revised Sheet No. 4B
Third Revised Sheet No. 4D
Third Revised Sheet No. 40
Fifth Revised Sheet No. 41
Ninth Revised Sheet No. 42
Fifth Revised Sheet No. 43
Fourth Revised Sheet No. 44
Third Revised Sheet No. 45
Fourth Revised Sheet No. 46
Third Revised Sheet No. 47
Third Revised Sheet No. 48
Fifth Revised Sheet No. 49
Sixth Revised Sheet No. 50
Fourth Revised Sheet No. 51
Fifth Revised Sheet No. 52
Third Revised Sheet No. 53
Fifth Revised Sheet No. 54
Fourth Revised Sheet No. 55
Fourth Revised Sheet No. 56
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Fourth Revised Sheet No. 59
Second Revised Sheet No. 60
Fourth Revised Sheet No. 61
Alternate Fourth Revised Sheet No. 61
Third Revised Sheet No. 62
Alternative Third Revised Sheet No. 62
Second Revised Sheet No. 63
Alternate Second Revised Sheet No. 63
Second Revised Sheet No. 64
Tenth Revised Sheet No. 74

[FR Doc. 88-10505 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-151-000 and TQ88-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

May 9, 1988.

Take notice that North Penn Gas Company (North Penn) on May 3, 1988, tendered for filing Sixth Revised Sheet No. 15C, Seventh Revised Sheet No. 15D, Seventh Revised Sheet No. 15E, Third Revised Sheet No. 15F and Fourth Revised Sheet No. 15G to its FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets are proposed to become effective June 1, 1988 and reflect a revised PGA Clause pursuant to the Federal Energy Regulatory Commission's Order Nos. 483 and 483-A at Docket No. RM86-14.

Additionally, North Penn is filing Eighty-Eight Revised Sheet No. PGA-1 to reflect changes in the cost of gas purchased. In support of the changes in rates contained in Eighty-Eighth Revised Sheet No. PGA-1 and pursuant to the Commission's Order Nos. 483 and 483-A, North Penn has submitted Schedule D1 and Schedule Q1.

North Penn proposes in sections 14.2 and 14.5 two subaccounts for Account 91 not required by the new PGA regulations. These subaccounts involve refunds and under or overcollections that would be associated with purchases by Corning Natural Gas Corp. (Corning). These amounts are not, however, earmarked for Corning. The special subaccounts are proposed by North Penn to avoid the situation in which Corning would receive benefits due to its status as a North Penn customer while not reimbursing North Penn for costs that North Penn has incurred and continues to incur in providing firm sales service to Corning. North Penn is requesting waiver of the Commission's regulations to the extent required for the Commission to accept sections 14.2 and 14.5 of its proposed PGA Clause.

North Penn respectfully requests waiver of any other of the Commission's Rules and Regulations as may be required to permit this filing to become effective June 1, 1988, as proposed.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motion or protests should be filed on or before May 16, 1988. 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,

Acting Secretary.

[FR Doc. 88-10543 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-154-000 and TQ88-1-37-000]

Northwest Pipeline Corp; Proposed Change in FERC Gas Tariff

May 6, 1988.

Take notice that Northwest Pipeline Corporation ("Northwest"), on May 2, 1988, pursuant to the requirements of Commission Order No. 483 and 483-A, submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. The current PGA adjustment, to be effective from June 1 through June 30, 1988, aggregates to a decrease in Northwest's commodity rate of 43.31¢ per MMBtu as reflected on Fourth Amended Thirty-Ninth Revised Sheet No. 10. The proposed change in rates would decrease revenues from jurisdictional sales for the month of June by $1,375,093.

Northwest also tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Fourth Amended Thirty-Ninth Revised Sheet No. 10
Third Amended Twenty-First Revised Sheet No. 10-A
First Amended First Revised Sheet No. 15
First Amended First Revised Sheet No. 16
First Amended Original Sheet No. 17
First Amended Original Sheet No. 20
First Amended First Revised Sheet No. 21
First Amended Second Revised Sheet No. 26
First Amended Second Revised Sheet No. 27

First Amended First Revised Sheet No. 23
Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 33
First Revised Sheet No. 36
First Revised Sheet No. 38
First Revised Sheet No. 39
Second Revised Sheet No. 40
First Revised Sheet No. 53
First Revised Sheet No. 58
First Revised Sheet No. 64
First Revised Sheet No. 65
First Revised Sheet No. 69
Third Revised Sheet No. 101
First Revised Sheet No. 102
Second Revised Sheet No. 104
Third Revised Sheet No. 105
First Revised Sheet No. 111
First Revised Sheet No. 121
Sixth Revised Sheet No. 122
Seventh Revised Sheet No. 123
Seventh Revised Sheet No. 124
Eighth Revised Sheet No. 125
Tenth Revised Sheet No. 126
Fifth Revised Sheet No. 126A
Tenth Revised Sheet No. 127
Eighth Revised Sheet No. 127-A
Ninth Revised Sheet No. 128
Fourth Revised Sheet No. 128-A
Fifth Revised Sheet No. 129
Fifth Revised Sheet No. 130
First Amended, First Revised Sheet No. 300
First Amended, First Revised Sheet No. 301
First Amended, First Revised Sheet No. 302
First Amended, Original Sheet No. 303

Alternate Tariffs

Alternate Seventh Revised Sheet No. 124
Alternate Fifth Revised Sheet No. 126-A
Alternate Tenth Revised Sheet No. 127
Alternate Eighth Revised Sheet No. 127-A
Alternate Fourth Revised Sheet No. 128-A

Sheet Nos. 10-A through 121 and Sheet Nos. 300 through 302, as listed above, are filed for the purpose of converting Northwest's sales rates from a therm to an MMBtu basis. Sheet Nos. 122 through 130 are tendered to revise Section 16, PGA Provision, of the General Terms and Conditions of Northwest's tariff in compliance with Commission Order Nos. 483 and 483-A dated November 10, 1987 and March 2, 1988, respectively. Northwest also requests waiver of § 154.305(i)(3)(ii) of the Commission's regulations as more fully described in its filing. Northwest states and a copy of the filing has been mailed to its jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10506 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-133-000 and TQ88-1-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 29, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Fourth Revised Sheet No. 3-A
Forty-First Revised Sheet No. 3-B

Panhandle further states that it is filing herewith six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Tenth Revised Sheet No. 43-1
Sixteenth Revised Sheet No. 43-2
Sixth Revised Sheet No. 43-2.1
Sixteenth Revised Sheet No. 43-3
Seventeenth Revised Sheet No. 43-4
Fifth Revised Sheet No. 43-4.1
First Revised Sheet No. 43-4.2
First Revised Sheet No. 43-4.3

Panhandle states that the proposed effective date of these revised tariff sheets if June 1, 1988.

Panhandle states that the instant filing is being filed in accordance with Order Nos. 483 and 483-A and § 154.310 *Transition Rules* of the Commission's Regulations. Sixty-Fourth Revised Sheet No. 3-A and Forty-First Revised Sheet No. 3-B reflect Panhandle's initial Quarterly PGA Rate Adjustment Sheet No. 3-B reflect Panhandle's initial Quarterly PGA Rate Adjustment to be effective June 1, 1988. Pursuant to § 154.310(c)(4)(i) the proposed rates to be effective June 1, 1988 continue the existing surcharge rate approved by the Commission's Order issued February 26, 1988 in Docket No. TA88-3-28-000 (March 1, 1988 PGA). These revised tariff sheets reflect a commodity rate increase of 60.49 cents per Dt as a result of increases in the projected purchased gas cost component. The revised tariff sheets filed herewith reflect an increase of $0.12 for Panhandle's Demand (D1) and no change for Demand (D2), to reflect an increase in the section 18.4 pipeline supplier demand costs.

Panhandle states that these revised tariff sheets also reflects revisions to section 18 (Purchased Gas Cost Rate Adjustment (PGA)) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1 to implement the changes as set forth in the Commission's Order Nos. 483 and 483-A.

Copies of the filing were served upon Panhandle's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10507 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-45-002]

Placid Oil Co.; Request for Waiver of Refund Obligation

May 9, 1988.

Take notice that on April 26, 1988, Placid Oil Company (Placid) filed with the Commission a petition pursuant to Rule 207 of the Commission's rules of practice and procedure (18 CFR 385.207 (1987)) for a waiver of a portion of a refund obligation.

The Commission, by its orders dated December 12, 1986 (36 FERC ¶ 61,248) and March 25, 1988 (42 FERC ¶ 61,373), held that Placid was not entitled to receive the 1973-74 biennium rate under

Opinion Nos. 770 and 770–A for natural gas production from the Louisiana State Lease 2856 Well No. 11, and imposed a refund obligation for sales therefrom to Tennessee Gas Pipeline Company (Tennessee). Placid requests relief from the portion of its refund obligation attributable to the royalty payment to the State of Louisiana.

Placid states the following in support of the petition for relief. On October 9, 1985, the Louisiana State Meneral Board adopted a resolution stating that Louisiana would not authorize its leasees/payors to withhold or recoup from future royalties, the royalty portion of any overcharges arising from adjustments to the measurement of the Btu content of gas produced on state leases. The State Mineral Board further warned that it would take appropriate legal action against lessees/payors who attempted an unauthorized recoupment in an effort to collect refunds of royalty payments for any gas overcharges. If Placid attempted to make billing adjustments to recover the earlier excess royalty payments, the Mineral Board's threatened sanction could seriously jeopardize Placid's financial condition and its bankruptcy reorganization plan. This results in creating a special hardship to Placid.

Any person desiring to be heard or to make any protest with reference to said petition should, within 30 days after publication of this notice in the **Federal Register**, 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 385.211 or 385.214 (1987)). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10508 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–155–000]

Southern Natural Gas Co; Proposed Changes in Ferc Gas Tariff

(May 6, 1988).

Take notice that on May 2, 1988, Southern Natural Gas Company (Southern) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1 to become effective June 1, 1988:

Sixth Revised Sheet No. 45A
Sixth Revised Sheet No. 45B
Fifth Revised Sheet No. 45C
Seventh Revised Sheet No. 45D
Eighth Revised Sheet No. 45E
First Revised Sheet No. 45E. 1
First Revised Sheet No. 45E. 2
First Revised Sheet No. 45E. 3
First Revised Sheet No. 45E. 4
Original Sheet No. 45E. 5
Original Sheet No. 45E. 6
Original Sheet No. 45E. 7

Southern states that the proposed tariff sheets reflect the restatement of the Purchased Gas Adjustment (PGA) clause of Southern's tariff in compliance with the Commission's Order Nos. 483 and 483–A and the revised PGA regulations promulgated thereunder.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedures (18 CFR 385.212 or 385.214). All such motions or 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. All such protests or motions are due on or before May 13, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–10509 Filed 5–10–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–149–000 and TQ88–1–41–000]

Southwest Gas Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that on May 2, 1988, Southwest Gas Corporation (Southwest) filed a notice of change in rates for jurisdictional natural gas sales service rendered to customers under Rate Schedule G–1 of Southwest's FERC Gas Tariff, Original Volume No. 1, along with proposed revisions to its Purchased Gas Cost Adjustment (PGA) provision contained in section 9 of the General Terms and Conditions in Original Volume No. 1 of its tariff. Southwest states that the purpose of the filing is to revise its PGA clause and to change its rates to conform with the Commission's new PGA regulations adopted in Order Nos. 483 and 483–A.

To implement the necessary revisions to its PGA clause and the notice of change in rates, Southwest tendered for filing the following tariff sheets to be made a part of Original Volume No. 1 of its FERC Gas Tariff:

Thirty-Ninth Revised Sheet No. 10
Seventh Revised Sheet No. 27
Sixth Revised Sheet No. 28
Fourth Revised Sheet No. 29
Fifth Revised Sheet No. 30
Second Revised Sheet No. 30A
Third Revised Sheet No. 30B
Ninth Revised Sheet No. 31
Sixth Revised Sheet No. 32
Fourth Revised Sheet No. 33
Second Revised Sheet No. 34
Fourth Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
Original Sheet Nos. 38 through 49

Southwest states that the proposed tariff sheets reflect a change in rates occasioned by the computation of new rates under §§ 154.303 and 154.310 of the Commission's Regulations. Southwest requests that the proposed tariff sheets be permitted to become effective on June 1, 1988.

Southwest also requests that the Commission modify the effective dates for Southwest's PGA filings set forth in § 154.304(c) of the Commission's Regulations from January 1, April 1, July 1, and October 1 to February 1, May 1, August 1, and November 1, with November 1, being the effective date for Southwest's annual filing.

Southwest further requests a permanent waiver of the obligation under the new PGA regulations to submit PGA data on magnetic computer tape. Southwest states that in view of the fact that it typically reflects Northwest as its only supplier of gas in its PGA filings, it would be unduly burdensome and impractical to require Southwest to submit the required information on magnetic computer tape as well as in hard copy form.

Southwest states that copies of its filing have been served upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

385.214). All such motions or protests should be filed on or before May 13, 1988. 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,

Acting Secretary.

[FR Doc. 88-10510 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-10-M

[Docket Nos. RP88-142-000 and TQ88-1-9-000]

Tennessee Gas Pipeline Co.; Tariff Filing

May 6, 1988.

Take notice that on April 29, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to Original Volumes 1 and 2 of its FERC Gas Tariff, to be effective June 1, 1988:

Original Volume No. 1

Summary Rate Sheets

Volume No. 1
- Sixth Revised Sheet No. 20
- Third Revised Sheet No. 20A
- Sixth Revised Sheet No. 21

Volume No. 2
- Seventh Revised Sheet No. 5
- Sixth Revised Sheet No. 6

PGA Clause

First Revised Sheet No. 218
Second Revised Sheet No. 219
Third Revised Sheet No. 220
Third Revised Sheet No. 221
Third Revised Sheet No. 222
Second Revised Sheet No. 223
Second Revised Sheet No. 224
First Revised Sheet No. 225
First Revised Sheet No. 226
Original Sheet No. 226A

Tennessee states that, pursuant to Order 483, it is revising the Purchased Gas Adjustment clause of its tariff to conform to §§ 154.301-154.310 of the Commission's Regulations. Tennessee is also restating its currently effective rates pursuant to § 154.310 of the Commisison's regulations; however, the rates have not been changed.

Tennessee states that the following changes to the PGA clause are reflected in the revised tariff sheets.

(1) Section 1 has been revised to provide for quarterly and annual gas rate adjustments. It also incorporates the new reporting requirements for the annual rate adjustment. New timing periods have been defined for the PGA Period and the Deferral Period.

(2) The base period references in the projection of gas costs under section 2 have been deleted. Prospective rates of suppliers based on known and measurable changes have been incorporated into the projection of gas costs.

(3) Section 2 has been revised to specify D_1/D_2 demand rate adjustments. Section 3 has been revised to provide for D_1/D_2 bifurcation in the Unrecovered Gas Cost Account and the Demand Surchage for Amortizing Unrecovered Gas Costs.

(4) A new section 6 establishes a refund subaccount in Account 191 to be credited with refunds, credits, past period credit billing adjustments and debited for past period debit billing adjustments. Section 6 provides for disbursement of the balance in the refund account when the threshold under § 154.305 of the Commission's Regulations is attained. The separate disbursement procedures for demand and commodity components follow the allocation procedure prescribed in § 154.305 of the Commisison's Regulations.

(5) The 103% assessment test has been removed from section 3, covering Interim Adjustments, and replaced by a new section 6 establishing an overall assessment test for test intervals throughout the year.

(6) Tennessee states that it has added a new section 1.5 to allow allocation of an annual basis of fixed gas costs that are determined on an annual or semi-annual basis and that are classified to commodity rates. It characterizes these types of costs, such as minimum bill charges, the portion of fixed transmission charges for imported gas classified to commodity rates and purchased gas demand costs included in single part rate schedules, as essentially annual fixed costs which should be allocated on a level basis to commodity rates. Tennessee proposes to calculate the allocation in the Annual Gas Rate Adjustment using the projected annual sales, and to attribute to billing determinants for that PGA Period. The quarterly and monthly costs derived through the annual allocation would be used for calculating the Current Adjustment, the Unrecovered Gas Costs and the Assessment Test.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commisison's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 13, 1988. 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 Commisison and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10511 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-145-000 and TQ88-1-58-000]

Texas Gas Pipeline Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that on May 2, 1988, Texas Gas Pipeline Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective June 1, 1988.

Twentieth Revised Sheet No. 4a
First Revised Sheet No. 19
Fourth Revised Sheet No. 20
First Revised Sheet No. 20a
Fourth Revised Sheet No. 21
Original Sheet No. 21a
Original Sheet No. 21b
Third Revised No. 22

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to Section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twentieth Revised Sheet No. 4a reflects a net increase in the rate after cumulative adjustment to 154.38¢/Mcf and a change in the rate Surcharge Adjustment to 3.49¢/Mcf yielding a proposed total rate of 187.34¢/Mcf (at 14.65 psia) to be effective June 1, 1988.

In addition, TGPL has submitted the additional tariff sheets above listed to revise section 12 (Purchased Gas Cost Adjustments) of the General Terms and Conditions of its Tariff to comply with the requirements of Order Nos. 483 and 483-A. Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before May 13, 1988. 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 rile a motion to intervene. Copiers of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10512 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-161-000 and TQ88-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 9, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 2, 1988, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 50
Fourth Revised Sheet No. 50A
Fourth Revised Sheet No. 50B
Fourth Revised Sheet No. 50C
Fourth Revised Sheet No. 50D
Third Revised Sheet No. 51
First Revised Sheet No. 51A
First Revised Sheet No. 51B
First Revised Sheet No. 51C
First Revised Sheet No. 51D
First Revised Sheet No. 447
Second Revised Sheet No. 448
Second Revised Sheet No. 449
First Revised Sheet No. 450
Second Revised Sheet No. 451
Second Revised Sheet No. 452
Second Revised Sheet No. 453
Second Revised Sheet No. 454
Second Revised Sheet No. 455
Second Revised Sheet No. 456
Second Revised Sheet No. 457
Third Revised Sheet No. 464

Texas Eastern states that it is making this instant filing pursuant to the transition rules under § 154.310 of the Commission's new PGA Regulations in order: (1) To set forth as part of Texas Eastern's FERC Gas Tariff revised PGA provisions which comply with the requirements of § 154.301 *et seq.*, and (2) to establish an initial current adjustment rate in compliance with §§ 154.302(n) and 154.305 (b) and (c) of the Commission's Regulations.

The proposed effective date for the subject tariff sheets is June 1, 1988.

Texas Eastern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 16, 1988. 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,

Acting Secretary.

[FR Doc. 88-10544 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP88-160-000 and TQ88-1-29-000]

May 9, 1988.

Take notice that on May 2, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Revised Volume No. 1

Revised Forty-Eighth Revised Sheet No. 15
Revised Eighth Revised Sheet No. 15-A
Sixth Revised Sheet No. 247
Sixth Revised Sheet No. 248
Eighth Revised Sheet No. 249
Sixth Revised Sheet No. 250
Sixth Revised Sheet No. 250-A
Third Revised Sheet No. 250-B
Third Revised Sheet No. 250-C
Second Revised Sheet No. 250-D

The proposed effective date for the subject tariff sheets is June 1, 1988.

Transco states that it is making the tariff filing in compliance with § 154.310 of the Commission's Regulations, which contain the Transition Rules applicable to the Commission's new Purchased Gas Adjustment (PGA) regulations adopted in Order Nos. 483 and 483-A. The filing includes tariff sheets containing (1) a PGA clause pursuant to § 154.303 of the Regulations; (2) an initial current adjustment rate computed under § 154.310(b) of the Regulations; and (3) the existing surcharge rate pursuant to § 154.310(c) of the Regulations.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy 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 May 16, 1988. 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,

Acting Secretary.

[FR Doc. 88-10545 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-150-000 and TA88-5-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on April 29, 1988 tendered for filing as part of its FERC Gas Tariff. Second Revised Volume No. 1, the following tariff sheet:8

44th Revised Sheet No. 5

The tariff sheet listed above is being filed pursuant to Transwestern's Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected herein represents an increase of $0.0004/dth as measured against Transwestern's Semi-Annual PGA filing in Docket No. TA88-4-42-000 (PGA88-4), which became effective on April 1, 1988.

The proposed effective date for the tariff sheet listed above is July 1, 1988.

Transwestern has also tendered for filing on April 29, 1988 the tariff sheets listed below pursuant to Order No. 483, § 154.303 (b)(1) of the Commission's regulations to establish a new Purchased Gas Adjustment (PGA) Clause to be effective June 1, 1988. These tariff sheets will appear in Transwestern's Article 19 of the General

Terms and Conditions of Transwestern's FERC Gas Tariff. Second Revised Volume No. 1. Tendered for filing are:

1st Revised Sheet No. 72
6th Revised Sheet No. 73
11th Revised Sheet No. 74
7th Revised Sheet No. 75
1st Revised Sheet No. 75A
7th Revised Sheet No. 76
3rd Revised Sheet No. 76A
3rd Revised Sheet No. 76B
3rd Revised Sheet No. 76C

Copies of the filing were served on Transwestern's jurisdicational customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance in §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1988. 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10513 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-134-000 and TQ88-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Trunkline Gas Company (Trunkline) on May 3, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volune No. 1:

Sixty-First Revised Sheet No. 3-A

Trunkline further states that it is filing herewith six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Seventh Revised Sheet No. 21-D
Seventh Revised Sheet No. 21-E
Twelfth Revised Sheet No. 21-F
Fourth Revised Sheet No. 21-F.1
Eighth Revised Sheet No. 21-G
Sixth Revised Sheet No. 21-I
Sixth Revised Sheet No. 21-J
First Revised Sheet No. 21-J.1
First Revised Sheet No. 21-J.2
Original Sheet No. 21-J.3
Original Sheet No. 21-J.4
Original Sheet No. 21-J.5

Trunkline states that the proposed effective date of these revised tariff sheets is June 1, 1988.

Trunkline states that the instant filing is being filed in accordance with Order Nos. 483 and 483-A and § 154.310 *Transition Rules* of the Commission's Regulations. Sixty-First Revised Sheet No. 3-A reflects Trunkline's initial Quarterly PGA Rate Adjustment to be effective June 1, 1988. Pursuant to § 154.310(c)(4)(i) the proposed rates to be effective June 1, 1988 continue the existing surcharge rate approved by the Commission's Letter Orders issued October 29, 1987 and November 9, 1987 in Docket No. TA87-2-30-001 (September 1, 1987 Compliance Filing). This revised tariff sheet reflects a commodity rate decrease of (0.66) cents per Dt as a result of decreases in the projected purchased gas cost component.

Trunkline states that these revised tariff sheets also reflect revisions to section 18 (Purchased Gas Cost Rate Adjustment (PGA)) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, Original Volume No. 1 to implement the changes as set forth in the Commission's Order Nos. 483 and 483-A.

Trunkline is also filing herewith six (6) copies of the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifteenth Revised Sheet No. 3-B
First Revised Sheet No. 21-O

The proposed effective date of these revised tariff sheets is June 1, 1988.

Trunkline states that these revised tariff sheets reflects the cancellation of section 21 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1 to eliminate all incremental pricing provisions effective June 1, 1988, pursuant to Congress' repeal of Title II of the NGPA and the Commission's Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000, *et al.*, which revoked Incremental Pricing regulations effective January 1, 1988 (40 FERC 61,095).

Copies of the filing were served upon Trunkline's jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10514 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-27-006 and RP85-209-015]

United Gas Pipe Line Co.; Filing

May 9, 1988.

Take notice that on April 29, 1988, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Revised Substitute Revised Original Sheet No. 4-G1
Revised Substitute Revised Original Sheet No. 4-H
Revised Substitute Revised Original Sheet No. 4-I
Revised Substitute Revised Original Sheet No. 4-J
Revised Substitute Revised Original Sheet No. 4-K
Revised Alternate Substitute Revised Original Sheet No. 4-G1
Revised Alternate Substitute Revised Original Sheet No. 4-H
Revised Alternate Substitute Revised Original Sheet No. 4-I
Revised Alternate Substitute Revised Original Sheet No. 4-J
Revised Alternate Substitute Revised Original Sheet No. 4-K

United states that the revised tariff sheets reflect arithematical revisions to its April 15, 1988 compliance filing, which results in an additional absorption of approximately $450,000 in take-or-pay related costs. United states that this filing is made subject to the same conditions and reservations set forth in its April 15, 1988 compliance filing.

United states that copies are being served on all its jurisdictional customers, state commissions and the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214,

385.211 (1987)). All such motions or protests should be filed on or before May 16, 1988. 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,

Acting Secretary.

[FR Doc. 88-10546 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-123-000 and TA88-2-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Valero Interstate Transmission Company ("Vitco"), on May 2, 1988 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in its Purchased Gas Adjustment Clause and changes in rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

7th Revised Sheet No. 14.2
1st Revised Sheet No. 21.7
2nd Revised Sheet No. 21.8
2nd Revised Sheet No. 21.9

FERC Gas Tariff, Original Volume No. 2

12th Revised Sheet No. 6
2nd Revised Sheet No. 8
2nd Revised Sheet No. 9
2nd Revised Sheet No. 10
2nd Revised Sheet No. 11
2nd Revised Sheet No. 12
Original Sheet No. 12.1
Original Sheet Nos. 12.2-12.49 Reserved

Vitco states that this filing reflects changes in its Purchased Gas Adjustment Clause and purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

The change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas costs of $.5291 per MMBtu and a surcharge of $.2943 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $.1561 per MMBtu and a negative surcharge of $1.1241 per MMBtu. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filing is June 1, 1988. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by June 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10515 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-139-000, and TQ88-1-43-000]

Williams Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 6, 1988.

Take notice that Williams Natural Gas Company (WNG) on April 29, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised First Revised Sheet Nos. 73-75, 81-86, 88 and 89
Second Revised First Revised Sheet Nos. 87, 92 and 93
First Revised Second Revised Sheet Nos. 2, 76-80, 90 and 91
Third Revised Third Revised Sheet No. 7
Second Revised Fourth Revised Sheet No. 6

These tariff sheets are being filed in compliance with Order No. 483, issued November 10, 1987. A magnetic tape is also being filed in compliance with FERC Form No. 542-PGA.

WNG states that pursuant to the Purchased Gas Adjustment in the revised Article 21 of its FERC Gas Tariff, which is being revised by this filing, it proposes to decrease its rates effective June 1, 1988, to reflect a $.0450 per Mcf decrease in the Cumulative Adjustment due to a decrease in WNG's projected gas purchase costs.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10516 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-164-000 and TQ88-1-35-000]

West Texas Gas, Inc.; Filing of PGA Tariff Sheets

May 9, 1988.

Take notice that on May 3, 1988, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Ninth Revised Sheet No. 3a
First Revised Sheet No. 21
First Revised Sheet No. 21a
Third Revised Sheet No. 21b
Second Revised Sheet No. 21c
First Revised Sheet No. 21d
First Revised Sheet No. 21e
Original Sheet Nos. 21f through 21j

Ninth Revised Sheet No. 3a and the accompanying explanatory tariff sheets were filed by WTG in accordance with the transmittal rules under the Commission's recently revised purchased gas adjustment regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons 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 May 16, 1988. 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,

Acting Secretary.

[FR Doc. 88-10547 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-156-000, and TQ88-1-49-000]

Williston Basin Interstate Pipeline Co.; Purchase Gas Cost Adjustment Filing

May 6, 1988.

Take notice that on May 2, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Tenth Revised Sheet No. 10
Third Revised Sheet No 91
Second Revised Sheet Nos. 92-95
Original Sheet No. 95A
Second Revised Sheet No. 96
Third Revised Sheet No. 97
Original Sheet No. 97A
Second Revised Sheet Nos. 98-98A

Original Volume No. 2

Twelfth Revised Sheet No. 10
Twelfth Revised Sheet No. 11

Williston Basin also submitted for filing as part of its FERC Gas Tariff the following alternate tariff sheet:

First Revised Volume No. 1

Alternate Tenth Revised Sheet No. 10

Williston Basin states that it has prepared the instant PGA filing without the benefit of a final Commission Order in Docket No. TA88-3-49-000 and as result submits both Alternate Tenth Revised Sheet No. 10 and Tenth Revised Sheet No. 10 consistent wth its request in Docket No. TA88-3-49-000.

The Company requests an effective date for the tariff sheets of June 1, 1988.

Both Alternate Tenth Revised Sheet No. 10, and Tenth Revised Sheet No. 10 (First Revised Volume No. 1), reflect a change in the Cumulative Gas Cost Adjustment for Rate Schedules G-1, SGS-1 and E-1 of a negative 17.380 cents per dkt from the Cumulative Gas Cost Adjustment contained in the Company's March 31, 1988 filing in Docket No. TA88-3-49-000. These changes reflect a cumulative gas cost adjustment from the average base cost of purchased gas of a negative 50.909 cents per dkt as supported in Schedule D-1.

Pursuant to the Commission's Final Rule (Order No. 483) and Order on Rehearing (Order No. 483-A) in Docket No. RM86-14 issued November 10, 1987 and March 2, 1988, respectively, Williston Basin also submitted Third Revised Sheet No. 91, Second Revised Sheet Nos. 92-95, Original Sheet No. 95A, Second Revised Sheet No. 96, Third Revised Sheet No. 97, Original Sheet No. 97A, and Second Revised Sheet Nos. 98 and 98A reflecting revision to its Purchased Gas Cost Adjustment Provision.

Williston Basin also submitted Twelfth Revised Sheet No. 10 (Original Volume No. 2) which would require a change to the cumulative gas cost adjustment for Rate Schedule X-1 of a negative 17.380 cents per dkt from the Cumulative Gas Cost Adjustment contained in the company's March 31, 1988 filing in Docket No. TA88-3-49-000, and Twelfth Revised Sheet No. 11 which was not included in the Company's March 17, 1988 filing in Docket No. RP87-115-003, but which was nonetheless accepted by Letter Order dated April 6, 1988.

Williston Basin states that by Letter Order dated April 12, 1988, it was granted waiver of the Form 542-PGA 9-track magnetic tape filing requirement. In lieu thereof the Company has submitted the instant filing on personal computer floppy diskette.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385-211). All such motions or protests should be filed on or before May 13, 1988. Protests will be considered by the Commission in determining the appropriate aciton 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,

Acting Secretary.

[FR Doc. 88-10517 Filed 5-10-88; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Irrigation Efficiency Program; Cooperative Agreement

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Irrigation Efficiency Program, Notice of Proposed Cooperative Agreement.

SUMMARY: The Western Area Power Administration announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement to design, develop, and implement an Irrigation Efficiency Program (Program) for the State of Colorado has been restricted to the Colorado State Soil Conservation Board (CSSCB).

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Plate, Conservation Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7227.

SUPPLEMENTARY INFORMATION: In 1981 the Western Area Power Administration (Western) initiated a Conservation and Renewable Energy (C&RE) Program. Among the various program activities is an Irrigation Pump Testing and Equipment Loan Program with Western's customers. The Loveland Area Office has been working with the Colorado State Soil Conservation Board to mutually benefit the State and the Federal Government by improving end-users' pump efficiencies and agricultural practices. Western's goals include the efficient utilization of energy resources. Western supports programs such as this through its C&RE Program. The CSSCB is committed to the economic success of Colorado agriculture and is in the best position to manage this Program. The CSSCB and the United States Department of Agriculture Soil Conservation Service, have worked with local soil conservation districts in irrigation and water efficiency programs and will provide expertise and training to CSSCB personnel hired to fulfill the objectives of this Program.

Solicitation Number: DE-RP65-88WJ05725

Scope of Project: The Program is designed to develop and implement irrigation efficiency activities within the State of Colorado. The Program will include an appropriate management plan for the program, data collection and reporting responsibilities, and coordination of those activities with other agencies involved in energy conservation such as utilities and Statewide organizations.

Issued in Golden, Colorado, April 29, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-10434 Filed 5-10-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30267A; FRL-3377-2]

Miles Laboratories; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Miles Laboratories, to register four laser pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, TS–767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 16, 1986 (51 FR 12923), which announced that Miles Laboratories, Household Product Div., 7123 West 65th St., Chicago, IL 60638, had submitted applications to register the following Laser products (EPA File Symbols 121–GL, 121–GA, 121–GT, and 121–GI), containing the active ingredient cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate], an active ingredient not included in any previously registered products.

The applications were approved for general use on October 17, 1987, for the following products:

1. EPA Reg No. 121–35. Product name: Laser Flying Insect Killer. 0.04%. Use: For flying insects such as houseflies, stableflies, mosquitoes, roaches, moths, and hornets.

2. EPA Reg. No. 121–36. Product name: Laser Ant and Roach Killer. 0.1%. Use: control ants, roaches, and other insects around baseboards, cracks, and crevices.

EPA Reg. No. 121–37. Product name: Laser Flea Killer Spray. 0.1%. Use: As surface spray to kill fleas, roaches, crickers, ticks, spiders, and other household insects.

4. EPA Reg. No. 121–38. Product name: Laser House and Garden Multipurpose Insect Killer. 0.04%. To kill mosquitoes, roaches, houseflies, and other garden bugs and sucking insects.

The Agency has considered all required data on the risks associated with the proposed use of cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-)2,2–dicholoroethenyl)-2,2-dimethyl-cyclopropanecarboxylate] and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of cyfluthrin [cyano-(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] when used in accordance with widespread and commonly recognized practice, wll not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on cyflutrhin [cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate].

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS–767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, . Arlington, VA 22202 (703–557–3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) identify the products' name and registation numbers and (2) specifiy the data or information desired.

Authority: 7 U.S.C. 136.

Dated: April 28, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–10351 Filed 5–10–88; 8:45 am]

BILLING CODE 6560–50–M

[PP 7G3465/T560; FRI–3377–1]

Clofentezine; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for clofentezine in or on certain raw agricultural commodities. These temporary tolerances were requested by Nor-Am Chemical Co.

DATE: These temporary tolerances expire March 30, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail:

Dennis Edwards, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2386.

SUPPLEMENTARY INFORMATION: Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, has requested in pesticide petition (PP) 7G3465 the establishment of temporary tolerances for clofentezine [3,6-bis-(o-chlorophenyl) 1,2,4,5-tetrazine] in or on the raw agricultural commodities pears at 0.5 part per million (ppm), almond hulls at 15.0 ppm, almond nutmeat at 0.4 ppm, peaches at 1.0 ppm, nectarines at 1.0 ppm, meat and meat byproducts of cattle at 0.05 ppm, cattle kidney at 0.05 ppm, cattle liver at 0.20 ppm, and milk at 0.05 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 45639–EUP–33, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in

accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 30, 1989. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was publsihed in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: April 29, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-10352 Filed 5-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Filing Dates for Illinois Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Illinois special elections.

SUMMARY: Committees required to file reports in connection with the only Special Primary Election to be held in the 21st Congressional District of Illinois on July 12, 1988, should file a 12-day Pre-Primary Report by June 30, 1988. Committees required to file reports in connection with *both* the Special Primary and Special General Election to be held on August 9, 1988, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report by July 28, 1988, and a 30-day Post-General Report by September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463. Telephone: (202) 376-3120; Toll Free (800) 424-9530.

Notice of Filing Dates for Special Elections 21st Congressional District, Illinois

All principal Campaign Committees of candidates in the Special Primary Election and all other political committees not filing monthly, which support candidates in the Special Primary shall file a 12-day Pre-Primary Report by June 30, 1988, with coverage dates from the last report filed through June 22, 1988. Committees must also file a July Quarterly Report, with coverage dates from June 23, 1988, through June 30, 1988, due on July 15, 1988.

All principal campaign committees of candidates in the Special General Election and all other political committees not filing monthly, which support candidates in this election shall file a 12-day Pre-General Election Report due on July 28, 1988, with coverage dates from July 1, 1988, through July 20, 1988, and a 30-day Post-General Report due on September 8, 1988, with coverage dates from July 21, 1988, through August 29, 1988. Committees must also file an October Quarterly Report due October 15, 1988.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

Dated: May 6, 1988.

[FR Doc. 88-10560 Filed 5-10-88; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-711]

Brehm Federal Savings Bank, Baltimore, MD; Final Action, Approval of Conversion Application

Date: May 4, 1988.

Notice is hereby given that on April 29, 1988, the Office of General Counsel ("OGC") and the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), or their respective designees, acting pursuant to delegated authority, approved the application of Brehm Federal Savings Bank, Baltimore, Maryland ("Brehm"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the Office of District Banks, with the concurrence of ORPOS and OGC, approved the application for Brehm to merge into Second National Federal Savings Bank, Salisbury, Maryland.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-10522 Filed 5-10-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-710; FHLBB No. 2580]

First Federal Savings and Loan Association of Lenawee County, Adrian, MI; Final Action, Approval of Conversion Application

Date: May 4, 1988.

Notice is hereby given that on April 29, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Lenawee County, Adrian, Michigan for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-10523 Filed 5-10-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011172–001
Title: United States Atlantic and Gulf Venezuela; Freight Conference Discussion Agreement
Parties: United States Atlantic and Gulf Venezuela Freight Conference; Marlago Line; King Ocean; Maritima Aragua, S.A.; Venezuelan Container Line
Synopsis: The proposed amendment would add Seaboard Marine, Ltd. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 232–011192
Title: The "K" Line-Hyundai Space Charter and Sailing Agreement in the Far East-U.S. Pacific Northwest Trades
Parties: Kawasaki Kisen Kaisha, Ltd.; Hyundai Merchant Marine Co., Ltd.
Synopsis: The proposed agreement would authorize the parties to charter space from one another and to coordinate sailings in the trade between ports in the Far East and U.S. Pacific Northwest ports, including inland points via such ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.
Dated: May 6, 1988.
[FR Doc. 88–10463 Filed 5–10–88; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011039–001.
Title: Port of Seattle Equipment Lease Agreement.
Parties:
Port of Seattle
Stevedoring Service of America
Synopsis: The proposed agreement amends the basic lease by (1) deleting authority to use two rubber-tired gantry cranes at Port of Seattle Terminals 37 and 42; and (2) reflecting appropriate rental adjustment therefore.

Agreement No.: 224–200017–001.
Title: Phildadelphia Port Corporation Terminal Agreement.
Parties:
Philadelphia Port Corporation
Delaware Operating Company
Synopsis: The proposed agreement extends the basic agreement term to July 2, 1988, and authorizes the right of the parties to extend the term for an additional 60 days.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.
Dated: May 6, 1988.
[FR Doc. 88–10521 Filed 5–10–88; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Commission of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), ammouncement is made of the following national advisory body scheduled to meet during the month of May 1988:

Name: Secretary's Commission on Nursing
Date: May 26, 1988
Time: 8:00 p.m.
Place: Capitol Hill Club, 300 First Street, SE., Washington, DC
and
Date: May 27, 1988
Time: 8:00 a.m.
Place: Room 703–727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda for May 26: The agenda for this meeting will consist of presentations on the issue of specialty certification for nurses. The presentations will commence at 8:00 p.m.; they will be preceeded by a dinner for Commission members which begins at 6:45 p.m.

Agenda for May 27: The agenda for this meeting will include: discussion of the Commission's draft interim report; a panel presenation or recruitment strategies for ADN and BSN programs; and preliminary consideration of recommendations for inclusion in the Commission's final report.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245–0409.

Lillian K. Gibbons,
Executive Director, Secretary's Commission on Nursing.
[FR Doc. 88–10555 Filed 5–10–88; 8:45 am]
BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Committee Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

Notice: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and national advisory councils in the month of June 1988. These committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in

accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH.

Date and Time: June 1–3: 8:30 a.m.

Place: Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Status of Meeting: Open—June 1: 8:30–9:30 a.m.; Closed—Otherwise.

Contact: Sally York, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology Subcommittee of the Neurosciences Research Review Committee, NIMH.

Date and Time: June 1–3: 8:30 a.m.

Place: Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Status of Meeting: Open—June 1: 8:30–9:30 a.m.; Closed—Otherwise.

Contact: Joyce Lamb, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: June 1–3: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Status of Meeting: Open—June 1: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: June 2–3: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting: Open—June 2: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Naomi Lichtenberg, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: June 2–3: 8:30 a.m.

Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting: Open—June 2: 8:30–9:30 a.m.; Closed—Otherwise.

Contact: Monica Woodfork, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: June 2–3: 9:00 a.m.

Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting: Open—June 2: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Kimberly Crown, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: June 2–4: 9:00 a.m.

Place: The Bethesda Holiday Inn, Pennsylvania Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 2: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Dorothy Tengood, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: June 5–8: 5:00 p.m.

Place: Wild Dunes, Isle of Palms, South Carolina 29451.

Status of Meeting: Open—June 5: 5:00–7:00 p.m.; Closed—Otherwise.

Contact: Samir Zakhari, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: June 6–8: 9:00 a.m.

Place: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

Status of Meeting: Open—June 6: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Ronald F. Suddendorf, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: June 6–8: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—June 6: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: June 7–8: 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 9, Bethesda, MD 20892.

Status of Meeting: Open—June 7: 9:00–12:00 Noon; June 8: 9:00 a.m.–5:00 p.m.; Closed—Otherwise.

Contact: Sheila H. Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research and research training.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and Time: June 8–10: 9:15 a.m.

Place: The River Inn, 924 Twenty-Fifth Street NW., Washington, DC 20037.

Status of Meeting: Open—June 8: 9:15–10:00 a.m.; Closed—Otherwise.

Contact: Peg Lyons, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: June 8–10: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—June 8: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Maureen Eister, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Acquired Immunodeficiency Syndrome Research Review Committee, NIMH.

Date and Time: June 9–10: 8:30 a.m.

Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 9: 8:30–9:15 a.m.; Closed—Otherwise.

Contact: Irma Fisher, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuroimmunological, psychosocial, behavioral, and psychological aspects of AIDS as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 9–10: 9:00 a.m.

Place: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 9: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 9–10: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—June 9: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Frances Smith, Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment, development, and assessment and makes recommendations to the National Advisory Mental Council for final review.

Committee Name. National Advisory Mental Health Council, NIMH.

Date and Time: June 13: 9:00 a.m.

Place: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—June 13: 9:00–9:30 a.m.; closed—Otherwise.

Contact: Rachel Townson, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health,

regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: June 13–15: 9:00 a.m.

Place: Days Inn, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 13: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Emile A. Embrey, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: June 16–17: 9:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting: Open—June 16: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH.

Date and Time: June 16–18: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 16: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Cathy Oliver, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Alcohol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and Time: June 20–21: 9:00 a.m.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Barbara Wagner, Parklawn Building, Room 12C–05, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1910.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B & C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: June 20–22: 9:00 a.m.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: Open—June 20: 9:00–10:30 a.m.; Closed—Otherwise.

Contact: Thomas D. Sevy, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 21–23: 8:30 a.m.

Place: Days Inn Congressional Park, Suite 331, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 21: 8:30–9:00 a.m.; Closed—Otherwise.

Contact: Kim Pham, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–5280.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: June 21–24: 9:00 a.m.

Place: Days Inn Congressional Park, Montrose Room, 1775 Rockville Pike, Rockville, MD 20857.

Status of Meeting: Open—June 21: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Council on Drug Abuse for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA.

Date and Time: June 21–24: 8:30 a.m.

Place: The Bethesda Ramada, Embassy I, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: Open—June 21: 8:30–9:00 a.m.; Closed—Otherwise.

Contact: Ron Gold, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: June 21–24: 8:30 a.m.

Place: Days Inn Congressional Park, Georgetown Room, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 21: 8:30–9:00 a.m.; Closed—Otherwise.

Contact: Heinz Sorer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: June 22–24: 9:00 a.m.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Status of Meeting: Open—June 22: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Lenore Radloff, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Small Business Research Review Committee, NIMH.

Date and Time: June 27–28: 9:00 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—June 27: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Bonnie Dwyer, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; Ms. Camillia Holland, NIDA Committee Management Officer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: May 5, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–10480 Filed 5–10–88; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 88E–0104]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ucephan™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ucephan™ and is publising this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension for a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug project, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ucephan™. Ucephan™ (10 percent sodium phenylacetate and 10 percent sodium benzoate) oral solution is indicated as adjunctive therapy for the prevention and treatment of hyperammonemia in the chronic management of patients with urea cycle enzymophathies involving partial or complete deficiencies of carbamylphosphate synthetase, ornithine transcarbamylase, or argininosuccinate synthetase. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Ucephan™ (U.S. Patent No. 4,284,647) from the Johns Hopkins University, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 30, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period. The letter also stated that one of the active ingredients, sodium phenylacetate, represented the first permitted commercial marketing or use, and that the other active ingredient, sodium benzoate, did not represent the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ucephan™ is 2,871 days. Of this time, 2,058 days occurred during the testing phase of the regulatory review period, while 813 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 14, 1980. The applicant claims the letter date, January 10, 1980, as the effective date of the first investigational new drug application (IND 17–123) related to the approved product. However, FDA records indicate that

IND 17-123 became effective 30 days after receipt, on February 14, 1980.

2. *The date of the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 2, 1985. The applicant claims September 30, 1985, as the date that a new drug application (NDA 19-530) for Ucephan™ was initially submitted. However, FDA did not receive NDA 19-530 until October 2, 1985.

3. *The date the application was approved:* December 23, 1987. FDA has verified the applicant's claim that NDA 19-530 was approved on December 23, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In is application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, or or before July 11, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 11, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the handling of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 27, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88-10481 Filed 5-10-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0107]

Allergan Optical; Premarket Approval of Duraclean™ Daily Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Optical, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of Duraclean™ Daily Cleaner for use to clean rigid gas permeable contact lenses before rinsing and disinfection. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 9, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 21, 1987, Allergan Optical, Irvine, CA 92715, submitted to CDRH an application for premarket approval of Duraclean ™ Daily Cleaner for use to clean rigid gas permeable contact lenses before rinsing and disinfection.

On November 17, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 9, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of Duraclean ™ Daily Cleaner states that the solution is indicated for use to clean rigid gas permeable contact lenses before rinsing and disinfection. Manufacturers of rigid gas permeable contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved rigid gas permeable contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 29, 1988.

John C. Villforth,

Director Center for Devices and Radiological Health.

[FR Doc. 88-10483 Filed 5-10-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0114]

Medtronic, Inc.; Premarket Approval of the Medtronic Synchromed Infusion System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Medtronic SynchroMed Infusion System which is comprised of the following components: SynchroMed Pumps, Models 8610H and 8611H; Vascular Catheters, Models 8700, 8702, and 8710; Access Port Model 8500; Port Connectors, Models 8500-1 and 8500-10; and Catheter Accessories. After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HEA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ronald Lipskin, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

SUPPLEMENTARY INFORMATION: On August 1, 1986, Medtronic, Inc., 7600 Central Ave. NE., Minneapolis, MN, submitted to CDRH an application for premarket approval of the Medtronic SynchroMed Infusion System. The device is a programmable, implantable pump that is indicated for the chronic intravascular infusion of floxuridine (FUDR) or doxorubicin hydrochloride (adriamycin) and, when required, bacteriostatic water, physiological saline, and/or heparin.

On November 3, 1986, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 14, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Ronald Lipskin (HFZ-420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Heath (21 CFR 5.53).

Dated: April 29, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-10548 Filed 5-10-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0091]

Zeus Scientific, Inc.; Premarket Approval of Fluoro-Cep® Estrogen

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Zeus Scientific, Inc., Raritan, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Clinical Chemistry and Clinical Toxicology Devices panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On March 9, 1987, Zeus Scientific, Inc., Raritan, NJ 08869, submitted on CDRH an application for premarket approval of the Fluoro-Cep® Estrogen. The device is an in vitro assay for fluorescent histochemical detection of estrogen binding cancer cells in human breast cancer. It is designed to assist pathologists in determining the proportion of breast cancer cells within a tumor containing high levels of estrogen binding proteins. Assay results provide clinicians with data that assist in the choice of individualized therapy for breast cancer patients. The use of Fluoro-Cep® Estrogen in vitro device provides information on one of several factors considered in the clinician's

selection of individualized treatment of breast cancer patients. It is recommended that the Fluoro-Cep® Estrogen assay results be determined by a pathologist experienced in fluorescence microscopy and breast cancer morphology.

On September 21, 1987, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Request should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRF—contact Kaiser Aziz (HFZ–440), (address above).

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs 515(d), 520(h), 909 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 28, 1988.

John C. Villforth,

Director Center for Devices and Radiological Health.

[FR Doc. 88–10484 Filed 5–10–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0106]

Medtronic, Inc.; Premarket Approval of the Medtronic® Prime ™ Coronary Balloon Dilatation Catheter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under the Medical Device Amendments of 1976, of the Medtronic® Prime™ Coronary Balloon Dilatation Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of February 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by June 10, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shang W. Hwang, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7371.

SUPPLEMENTARY INFORMATION: On May 5, 1987, Medtronic, Inc., Minneapolis, MN 55432, submitted to CDRH an application for premarket approval of the Medtronic® Prime™ Coronary Balloon Dilatation Catheter. The catheter is indicated in patients with coronary artery disease who are acceptable candidates for coronary artery bypass graft surgery, in addition to meeting one or more of the criteria listed below:

1. Single-vessel atherosclerotic coronary artery disease that is concentric, discrete, subtotal, noncalcified, and accessible to a dilatation catheter;
2. Multiple-vessel coronary artery disease under certain circumstances;
3. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery, have recurrence of symptoms, and (a) progression of disease, or (b) stenosis and closure of the grafts.

On January 15, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 29, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition data and information showing that there is a genuine and substantial issue of material fact for resolution through

administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 10, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 29, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–10485 Filed 5–10–88; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Agreement on Social Security Between the United States and Spain; Entry Into Force

The Commissioner of Social Security gives notice that an agreement coordinating the U.S. and Spanish social security programs entered into force on April 1, 1988. The agreement with Spain, which was signed on September 30, 1986, is similar to U.S. social security agreements already in force with eight other countries—Belgium, Canada, the Federal Republic of Germany, Italy, Norway, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Spanish agreement eliminates dual social security coverage—the situation that exists when a person from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker and his or her employer may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Spanish agreement, an employee who is sent by an employer in the U.S. to work in Spain for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminates dual U.S. and Spanish coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights merely because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or Spanish benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dated: May 2, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88–10412 Filed 5–10–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA–650–08–4121–09]

Green River-Hams Fork and Powder River Regional Coal Teams; Notice of Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is reestablishing the regional coal teams (RCTs) for the Green River-Hams Fork (Colorado and Wyoming) and Powder River (Wyoming and Montana) coal production regions. The RCTs are independent subcommittees of the Federal-State Coal Advisory Board chartered by the Secretary on October 3, 1986. As such, the RCTs will guide all phases of the coal activity planning process in the Green River-Hams Fork and Powder River coal production regions and will provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing matters, specifically those concerning leasing levels and on regional coal lease sale schedules and the tracts to be offered.

Further information regarding these committees may be obtained from the Director, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Green River-Hams Fork and Powder River Regional Coal Teams is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 Code of Federal Regulations 3400.0–3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Dated: April 29, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88–10468 Filed 5–10–88; 8:45 am]

BILLING CODE 4310–10–M

[AA–650–08–4121–09]

San Juan River Regional Coal Team; Notice of Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is establishing a regional coal team (RCT) for the San Juan River (New Mexico and Colorado) coal production region. The RCT is an independent subcommittee of the Federal-State Coal Advisory Board chartered by the Secretary on October 3, 1986. As such, the RCT will guide all phases of the coal activity planning process in the San Juan River coal production region and will provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing matters, specifically those concerning leasing levels and on regional coal lease sale schedules and the tracts to be offered.

Further information regarding this committee may be obtained from the Director, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The certification of establishment is published below.

Certification

I hereby certify that establishing the San Juan River Regional Coal Team is necessary and in the public interest in connection with the performance of

duties imposed on the Department of the Interior by those statutory authorities listed in 43 Code of Federal Regulations 3400.0-3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Date: April 29, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88-10469 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[CA-060-08-4410-4-ADVB]

Call for California Desert District Advisory Council Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for California Desert District Advisory Council.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill a vacant position on the California Desert District Advisory Council in the public-at-large category. The position became vacant upon the resignation of a member whose term would have expired December 31, 1988. Anyone selected from the nominations, and appointed by the Secretary of the Interior, would be eligible for re-appointment to a full three-year term beginning January 1, 1989.

Nominees must be qualified to provide advice in the specific public-at-large category. Nominations should be sent to District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507 and nominations will close June 15, 1988. Persons providing nominations should include the nominee's name, home and business addresses and telephone numbers, current employment and position, community or private affiliations, and qualifications for representing the general public on the Advisory Council.

The purpose of the Advisory Council is to provide informed advice to the District Manager on the management of the public lands. Members serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

The Council normally will meet at least twice annually. Additional meetings may be called by the District Manager, or his designee, in connection with special needs for advice.

All nominations must be received in the Riverside office listed above no later than Wednesday, June 15, 1988.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, Bureau of Land Management California Desert District Office, 1695 Spruce Street, Riverside, CA 92507, (714) 351-6383.

H.W. Riecken,

Acting District Manager.

May 5, 1988.

[FR Doc. 88-10442 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-40-M

[AZ-020-08-4212-13; A-22625]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange, public land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 19 N., R. 21 W.,
Sec. 31, lot 5, E½, E½W½.
Containing 500.00 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Walter E. Biewer of Prescott, Arizona:

Gila and Salt River Meridian

T. 14 N., R. 12 W.,
Sec. 5, S½;
Sec. 17, N½.
T. 18 N., R. 17 W.,
Sec. 9, N½SW¼, SW¼SW¼.
T. 21 N., R. 17 W.,
Sec. 21, lots 1-4, W½E½, W½;
Sec. 27, N½, SE¼.
T. 23 N., R. 13 W.,
Sec. 3, lots 1-4, SW¼NW¼, W½SW¼, SE¼SW¼.
T. 27 N., R. 16 W.,
Sec. 3, lots 1-4, S½N½, S½.
T. 28 N., R. 15 W.,
Sec. 17, west 1340 feet of lots 2, 3 and 4, W½.
T. 28 N., R. 16 W.,
Sec. 35, E½, E½NW¼, SW¼NW¼, SW¼.
Containing 3,866.55 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: a). right-of-way for ditches and canals pursuant to the Act of August 30, 1890.

2. Subject to: a). right-of-way to the Southwest Gas Corporation (A-4545); b). right-of-way to the Mohave County Board of Supervisors (A-13877); c). reservation of all minerals to the Santa Fe Pacific Railroad Company; and d). restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84-10 adopted on December 3, 1984, as amended.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same.

2. Easement for electric transmission line.

3. Undefined easement for roads, trails and pipelines.

The purpose of the exchange is to consolidate federal land to facilitate resource management in range, wildlife and recreation and to dispose of land with speculative development potential.

Publication of this Notice will segregate the subject lands from operation of the public land laws. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

Date: April 29, 1988.

[FR Doc. 88-10443 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract

authorizing the operation of restaurant and gift shop services and facilities at Ellis Island, Statue of Liberty National Monument, New York, for a period of approximately fifteen (15) years from the date the contract is signed. The Prospectus which describes this opportunity will be released to the public in the near future and ninety days will be allowed from the date of release for responses to be received.

This proposed contract requires a construction and improvement program. Construction and improvement of Ellis Island was addressed in the Analysis of Alternatives (Environmental Assessment) for the General Management Plan, dated December 1980 which resulted in a Finding of No Significant Impact.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the ninetieth (90th) day following release date shown on the cover of the Prospectus to be considered and evaluated.

Interested parties should contact the Superintendent, Statue of Liberty National Monument for information as to the requirements of the proposed contract and for application materials.

Date: April 15, 1988.

Steven H. Lewis,

Deputy Regional Director, North Atlantic Region.

[FR Doc. 88-10419 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with H.S. Concessions, Inc., authorizing it to continue to provide food service and beach sundry merchandise sales facilities and services for the public at the Sandy Hook Unit of Gateway National Area, New York-New Jersey, for a period of no more than twenty (20) years.

The Fact Sheet describing this opportunity will be released to the public in the near future, and sixty days will be allowed from the date of release for responses to be received.

This proposed contract requires a construction and improvement program. The construction and improvement program required is addressed in the revised Development Concept Plan for the Sandy Hook Unit of Gateway National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1985; an extension was granted to allow time to complete the concession planning process for the beach locations. Therefore, pursuant to the Act of October 9, 1965, as cited above, an existing satisfactory concessioner is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following the release date shown on the cover of the Fact Sheet to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, Boston, Massachusetts, for information as to the requirements of the proposed contract.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

Date: April 11, 1988.

[FR Doc. 88-10420 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Dated Submitted: May 3, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0011.

Type of Submission: Reinstatement.

Title: Application for Assistance—American Schools and Hosptials Abroad.

Purpose: A.I.D. finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. In order to assure compliance and appropriate grant assistance, information is required of the grant applicants. Respondents will have a submission burden of one submission per year.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-10403 Filed 5-10-88; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Such Memories; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement; Certain Erasable Programmable Read Only Memories

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: International CMOS Technology, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its sevice upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 6, 1988.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official

business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202–252–1805.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 6, 1988.

[FR Doc. 88–10565 Filed 5–10–88; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Atlas Powder Co.

In accordance with Departmental policy, as set forth in 28 CFR 50.7, notice is hereby given that on May 3, 1988, a proposed consent decree in *United States v. Atlas Powder Co.*, Civil Action No. 86–6984, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed consent decree resolves claims of the United States against Altas Powder Company for discharge of pollutants into two Pennsylvania streams in excess of limitations imposed by the permit issued to Atlas under the Clean Water Act. The consent decree requires Atlas to pay a civil penalty of $840,000 and to make modifications to its facilities and operations to bring the plant into compliance with the Clean Water Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Atlas Powder Co.*, D.J. Ref. 90–5–1–1–2761.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market St., Philadelphia, Pa. 19106, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pa., 19106, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $3.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10399 Filed 5–10–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Complaint and Consent Decree Pursuant to Clean Water Act; Empire Sand & Gravel Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *April 5, 1988* a proposed Complaint and Consent Degree in *United States v. Empire Sand & Gravel Co., Inc.*, Civil Action No. CV–88–90–BLG–JFB, was lodged with the United States District Court for the District of Montana.

The Complaint filed by the United States alleged that the defendants had violated section 113(a) of the Clean Air Act (the "Act"), seeking injunctive relief and civil penalties. The company owns and operates a portable hot asphalt concrete plant for purposes of road construction. The plant was converted to burn pulverized coal as well as diesel fuel. Stack Emissions Tests showed the plant to be in violation of the NSPS limit for particulate matter and opacity. The proposed consent decree requires the defendants to pay a civil penalty of $30,000. If the requirements are not met a stipulated of $300.00 per day of noncompliance will be due and payable.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Complaint and Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Empire Sand & Gravel Co., Inc.* DOJ# Ref. 90–5–2–1–987. The proposed Complaint and Consent Decree may be examined at the office of the United States Attorney, District of Montana, 5043 Federal Building, 26th Street & 3rd Avenue North, Billings, Montana. Copies of the Complaint and Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Complaint and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10400 Filed 5–10–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act, McIntosh Mining Co. & Esperanza Resources

In accordance with Departmental policy 28 CFR 50.7, notice is hereby given that on April 20, 1988 a proposed consent decree in *United States* v. *Richard Lee McIntosh, d/b/a McIntosh Mining Company and Esperanza Resources Company*, Civil Action A86–353, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendants due to discharges of pollutants from defendants' placer gold mine. The consent decree provides for payment of a civil penalty in the amount of $15,000 and for injunctive relief to prevent defendants from operating a placer mine that discharges pollutants into waters of the United States, unless the mine is in compliance with a valid NPDES permit and the compliance plan contained in the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree.

Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Richard McIntosh, et al.*, D.J. Ref. No. 90–5–1–1–2626. The proposed consent decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 for reproduction costs, payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10401 Filed 5–10–88; 8:45 am]

BILLING CODE 4401–01–M

Lodging of Stipulation To Modify Consent Decree Pursuant to Clean Water Act; Trident Seafoods Corp.,

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 20, 1988 a proposed second stipulation to modify consent decree in *United States* v. *Trident Seafoods Corporation*, Civil Action A83–327, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendants due to discharges to Akutan Harbor of pollutants, including fish waste, scrap maetal and debris from its shore-based and floating plants. That action resulted in a consent decree under which Trident was required to comply with the terms and conditions of an NPDES permit, and the compliance schedule contained in the consent decree.

The proposed second stipulations to modify consent decree extends the compliance schedule in the consent decree until such time as EPA Region 10 renders a decision on Trident's request for a permit modification, but no later than November 7, 1988. The proposed stipulation also requires Trident to pay stipulated penalties of $30,000 for past violations of the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed second stipulation to modify consent degree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Trident Seafoods Corporation*, D.J. Ref. No. 90–5–1–1–2002A. The proposed stipulation to modify consent decree may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the stipulation may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Dapartment of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed stipulation may be obtained in person or by mail from the Environmental Enforcement Section Land and Natrual Resources Division of the Department of Justice. In requesting a copy please enclosed a check in the amount of $170 for reproduction cost, payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–10402 Filed 5–10–88; 8:45 am]

BILLING CODE 4401–01–M

[AAG/A Order No. 17–88]

Privacy Act of 1974; Modified System

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Criminal Division, is modifying a system of records entitled "Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, as amended, JUSTICE/CRM–017."

The Criminal Division is modifying its system notice to (1) reflect that certain summary data has been extracted from file folders and stored on magnetic disks, (2) describe the categories of records more clearly, and (3) revise the routine use section to more clearly and more accurately outline the disclosure policies authorized by the Foreign Agents Registration Act of 1938, as amended. These and other minor changes have been italized for public convenience.

You may submit written comments on the proposed changes to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division Department of Justice, Room 6402, 601 D Street, NW., Washington, DC 20530. All comments must be received by June 10, 1988.

The modified system description is reprinted below.

Dated: April 26, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/CRM–017

SYSTEM NAME:

Registration and Propaganda Files Under the Foreign Agents Registration Act of 1938, as amended.

SYSTEM LOCATION:

U.S. Department of Justice; Criminal Division: *Bond Building, 1400 New York Avenue, NW,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons required to file under the Foreign Agents Registration Act of 1938, *as amended, (FARA),* 22 U.S.C. 611 *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) An automated alphabetical indices which includes summary data such as registrant names, file numbers, dates of registration, and a synopsis of activities performed for a given foreign principal; and (2) file folders which contain copies of all registration statements and statements concerning the distribution of political propaganda furnished under FARA. Other records related to subject matters described in this system will be maintained in the Central Criminal Division Index File and Associated Records (JUSTICE/CRM–001) System. Such other records may include related correspondence, inspection and/or investigative reports, and/or statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under FARA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 22 U.S.C. 611 et seq. The system is also maintained to implement the provisions of 28 CFR 5.1 through 5.801.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As prescribed by 22 U.S.C. 616 (a), (b), and (c), records may be disclosed as follows:

These records are public records and are open to public examination and inspection and copies of the same shall be furnished to every applicant at fees prescribed by 28 CFR 5.601. The registration statement and other statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of FARA may be withdrawn from public examination. Any records withdrawn will be incorporated into the Central Criminal Division Index File and Associated Records (JUSTICE/CRM–001) System.

One copy of every registration statement filed under FARA and one copy of every amendment or supplement thereto, and one copy of every item of poilitical propaganda filed under FARA shall be forwarded to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States.

Information obtained under FARA, including the names of registrants, copies of registration statements, or parts thereof, copies of political propaganda, or other documents or information filed under FARA, may be furnished to departments and agencies in the executive branch and committees of the Congress.

In addition, records may be disclosed to (1) a Member of Congress or a staff person acting upon the Member's behalf (a) as a public record or (b) when the Member or staff person requests the information on behalf of and at the request of the individual who is the subject of the record, and, (2) the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records contained in this system are stored manually on index cards and in file jackets; *selected summary data, e.g., name and address of registrant, name of foreign principal, description of activities, amount of money received, and promotional material disseminated, are stored on magnetic disks.*

RETRIEVABILITY:

Paper records and summary data are retrieved by name of registrant.

SAFEGUARDS:

These records have been designated as public records by 22 U.S.C. 616. However, to protect the integrity of the records, the file jackets are obtained for applicants by Registration Unit personnel who are present in the public office during duty hours, and the room is locked during non-duty hours.

RETENTION AND DISPOSAL:

Destroyed ten years after close of case (National Archives and Records Administration Job No. NC1–60–78–1 pending).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Criminal Division, U.S. Department of Justice, 10th Street and Constitution Avenue, NW, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made pursuant to the provisions of 28 CFR 5.600 and 5.601.I95 contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought

RECORD SOURCE CATEGORIES:

The source of information contained in this system is the registrant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR DOC. 88–10393 Filed 5–10–88; 8:45 am]
BILLING CODE 4410–01–M

[AAG/A Order No. 18–88]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.A. 552a), the Justice Management Division (JMD), Department of Justice, is modifying a system of records entitled, "Security Clearance Information System (SCIS), JUSTICE/JMD-008." The system, which was last published in the **Federal Register** on February 4, 1983 (48 FR 5357), is modified to (1) add two new "Categories of Individuals Covered by the System" (identified as C. and D.), (2) remove erroneous language which appears to exclude Department attorneys as individuals covered, (3) clarify the categories of records maintained and (4) amend the routine uses of information. These and minor changes have been made to clarify and more accurately describe the system. All changes have been italicized for public convenience.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system.

Therefore, please submit any comments by June 10, 1988. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street, NW., Washington, D.C. 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is reprinted below.

Dated: April 27, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-008

SYSTEM NAME:

Security Clearance Information System (SCIS).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been investigated and cleared for employment and/or for access to data classified for national security reasons, i.e.,

A. *Current employees, excluding the Federal Bureau of Investigation (FBI), and the Drug Enforcement Administration (DEA),*

B. *Former employees, excluding the FBI and DEA (maintained for a maximum of one year from date of termination),*

C. *Contractors with whom contracts (or other agreements) are, have been, or are offered to be entered into by the Department of Justice, including the FBI and DEA, and*

D. *Persons associated with and/or acting for the defense or for the courts in a criminal proceeding which involves classified information.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains two subsystems: (a) a Clearance Index Reference Record which is an automated system for identifying the individuals in Categories of Individuals above listing the status and types of investigations, the dates of clearances *and* level of clearances and (b) a Character File *including one or more of the following:* (1) Standard form 86 (Office of Personnel Management), Security Investigation Data for Sensitive Position; (2) Copies of investigative reports from the Office of Personnel Management, *the FBI, and/or other Federal investigative agencies;* (3) Correspondence related to the request for the investigations, results of the investigation, and clearance approvals for access to classified national security information and waivers; and (4) Other information relating to the trustworthiness of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with Presidential Executive Orders 10450 (clearance for Federal employment) and 12356 (access to data classified for National Security reasons), *and the Classified Information Procedures Act of 1980.*

PURPOSE OF THE SYSTEM:

Records in this system are used to determine the suitability, eligibility and/or qualifications of employees for initial or continued employment in the Department of Justice (excluding the FBI and DEA), and for employment in sensitive positions involving access to classified information. The records are also used to make similar suitability determinations regarding the employment of contractors to perform a service for the Department (including the FBI and DEA), and to establish the trustworthiness for access to classified information of persons associated with an/or acting for the court or the defense during criminal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information in these records may be disclosed to:

(a) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office, or establishment, that such agency, office or establishment having an interest in either the initial or continued employment of an individual, needs such records or information from this system in order to evaluate qualifications, suitability and loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purpose of either granting, renewing, suspending, or revoking a security clearance.

(b) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office, or establishment, that such agency, office or establishment needs records or information from this system either because it has conducted or is conducting an investigation of the individual in order to evaluate qualifications, suitability, or loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purpose of either granting, renewing, suspending, or revoking a security clearance.

(c) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when it has been determined by the Department of Justice, or by such agency, office, or establishment, that such agency, office or establishment having an interest in either the initial or continued employment of a contractor, needs such records or information from this system in order to evaluate qualifications, suitability, and loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or the purpose of either granting, renewing, suspending, or revoking a security clearance.

(d) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia government, when it has been determined by the Department of Justice, or by such agency, office or establishment, that such agency, office or establishment needs records or information from this system either because it has conducted or is conducting an investigation of the contractor in order to evaluate qualifications, suitability, or loyalty to the United States Government, or trustworthiness to access classified information or restricted areas, and/or for the purposes of either granting, renewing, suspending or revoking a security clearance.

(e) Security officials and investigators of other U.S. Government Agencies or Departments for liaison purposes involving access to classified material during meetings, conferences or training courses.

(f) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(g) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(h) The National Archives and Records *Administration and the General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) *A court or adjudicative body before the Department of Justice is authorized to appear, when the Department of Justice or any subdivision thereof, or any employee of the Department of Justice in his or her official capacity, or any employee of the Department of Justice in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States where the Department of Justice determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Department of Justice to be arguably relevant to the litigation, or to the protection of such records which have been classified in the interest of national security.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated data is stored on a main frame computer in the Department of Justice Uniform Personnel System. Paper files are maintained in a secure file room.

RETRIEVABILITY:

All data is retrieved by searching under the employee's name *and social security account number.*

SAFEGUARDS:

Information contained in the system includes some classified National Security Information. It is safeguarded and protected in accordance with Departmental rules and procedures governing the protection of this material.

Safeguards include the assignment to authorized users of passwords to access the automated data, and of combination formulas to access manual records in locked safes.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with items 23.a, 23.b, and 24 of the General Records Schedule as approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, *Security and Emergency Planning Staff*, Justice Management Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing to the System Manager with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name, title and organization of the employee, *a notarized signature*, and the general subject matter of the inquiry. The requestor will also provide a return address for transmitting a reply. Requests for copies of investigative reports must be directed to the Office of Personnel Management, the Federal Bureau of Investigation, *or other Federal investigative agencies, as* appropriate.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are (a) *individuals covered by the system* and (b) those individuals (informants) contacted by the *Federal investigators* who furnished information in the background investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from *subsection (d)* of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 533 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 88-10394 Filed 5-10-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 19-88]

Privacy Act of 1974; Privacy Act System of Records

This notice is provided pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Justice, Immigration and Naturalization Service (INS), proposes to alter and establish as a separate system of records its "Centralized Index and Records (Master Index)." Notice thereof is currently published in the **Federal Register** at 49 FR 43812 as "Subsystem E." of the Immigration and Naturalization Service Index System, JUSTICE/INS-001. Because Subsystem E. is the primary index and records system for INS, it is being extracted and republished below as a separate system of records to achieve greater clarity and accuracy of the system description. The system will replace Subsystem E. in its entirety and will be known as "The Immigration and Naturalization Service Alien File (A File) and Central Index System (CIS), JUSTICE/INS-001A." In addition, the system is being altered to (1) add two new routine uses (identified as M and P) and (2) remove exemptions (e)(4)(I), (f) and (h) because they are unnecessary. A rule promulgating exemptions for the system appears in the Proposed Rules Section of today's **Federal Register.**

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by June 10, 1988. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(o), the Department has provided a report on this system to OMB and the Congress.

The system description is reprinted below.

Dated: April 26, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS-001A

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS).

SYSTEM LOCATION:

Central, Regional, District, and other INS file control offices in the United States as detailed in JUSTICE/INS-999. Remote access terminals will also be located in other components of the Department of Justice and in the Department of State on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive Orders, and Presidential proclamations administered by INS, and witnesses and informats having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The computerized indexing system contains personal identification data such as A-File number, name, date and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the "A-file." Microfilm records contain naturalization certificates and any supporting documentation prior to April 1, 1956; however, after that date, this type of information is maintained in the "A-file" which is described in B. below.

B. The hard copy A-file contains all the individual's official record material such as naturalization certificates; various forms, applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; reports; correspondence; and memorandums on each individual for whom INS has created a record under the Immigration and Nationality Act.

AUTHORITY FOR MAINTENANCE OF RECORDS:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, and 8 U.S.C. 1360), and the regulations pursuant thereto.

PURPOSE:

The system is used primarily by INS and other Department of Justice employees to administer and enforce the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and the referral of such violations for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

D. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regualtory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

E. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction, or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

F. To a Federal, State, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

H. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

I. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

J. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

K. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

L. To a Federal, State, local or foreign government agency in response to its request for assistance in the collection or repayment of loans and fraudulently or erroneously secured benefits or grants, or other debts owed to the United States.

M. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work study program pursuant to 42 U.S.C. 2751 *et seq.*

N. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of a personal privacy.

O. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

P. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most A-file records are paper documents and are stored in file folders. Some microfilm and other records are stored in manually operated machines, file drawers, and filing cabinets. Those index records which can be accessed electronically are stored in a data base on magnetic disk and tape.

RETRIEVABILITY:

These records are indexed and retrieved by A-file number, name, and/or date of birth.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

A-file records are retained for 75 years from the closing date or date of last action and then destroyed. Automated index records are retained only as long as they serve a useful purpose and then they are deleted from the system disk and/or tape.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Director, Records Management Branch, Records Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, the nearest INS office, or the INS office maintaining desired records, if known, by using the list of principal offices of the Immigration and Naturalization Service Appendix: JUSTICE/INS–999, published in the **Federal Register.**

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at one of the addresses identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, date and place of birth, and notarized signature of the individual who is the subject of the record, and any other information which may assist in identifying and locating the record, and a return address. For convenience, INS Form G-639, FOIA/PA Request, may be obtained from the nearest INS office and use to submit a request for access.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information contained in INS records is supplied by individuals on Department of State and INS applications and forms. Other information comes from inquiries and/or complaints from members of the general public and members of Congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports to investigations, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other entities, including Federal, State, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g) of the Privacy Act. These exemptions apply to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register and codified as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 88-10395 Filed 5-10-88; 8:45 am]
BILLING CODE 4410-10-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-46)]

NASA Advisory Council (NAC), Life Sciences Advisory Committee (LSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life Sciences Advisory Committee.

DATE AND TIME: May 31, 1988, 8:30 a.m. to 9 p.m., June 1, 1988, 8 a.m. to 5 p.m.

ADDRESS: Holiday Inn-Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Griffiths, Code EBF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1545).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee provides advice on the coordination of NASA's life sciences research program. It assists in the long-range planning of space life sciences research and coordinated ground-based research. The committee will meet to discuss the Office of Space Science and Applications (OSSA) budget status and projection, Life Sciences Fiscal Year 1990 budget and long-range programs. The group is chaired by Dr. Harry C. Holloway and is composed of 16 members. The meeting will be open to the public up to the capacity of the room (approximately 45 people including members of the committee).

Type of Meeting: Open.

Agenda:

May 31, 1988

8:30 a.m.—Chairman's Remarks.
9 a.m.—Fiscal Year (FY) 1989 Budget Status and FY-90 Projection.
10:30 a.m.—Life Science Advisory Committee (LSAC) Discussion.
1 p.m.—Space Biology Initiative.
3 p.m.—Committee Discussion.
3:30 p.m.—Space Station Issues/Update.
7 p.m.—Committee Discussion: Guidance to new Committees.
9 p.m.—Adjourn.

June 1, 1988

8 a.m.—Committee Issues/Concerns.
9 a.m.—Comet Rendezvous-Asteroid Flyby/Cassini.
10 a.m.—Attached Payloads Announcement of Opportunity (AO), Earth observing System (EoS) Selection.
11 a.m.—FY-90 Life Sciences Budget.
3 p.m.—Committee Discussion/Position Statements.
5 p.m.—Adjourn.

May 5, 1988.

John F. Duggan,
Director, General Management Division.

[FR Doc. 88-10406 Filed 5-10-88; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-508]

Environmental Assessment and Finding of No Significant Impact; Washington Public Power Supply System et al.

In the matter of Washington Public Power Supply System, Pacific Power and Light Company, Portland General Electric Company, Puget Sound Power and Light Company, the Washington Water Power Company, and Washington Public Power Supply System Nuclear Project No. 3.

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR-154 issued to Washington Public Power Supply System (applicant or WPPSS) for Nuclear Project No. 3 (WNP-3). The facility is located on the applicant's site in southeastern Grays Harbor County, Washington, about 26 miles west of Olympia, Washington.

Environmental Assessment

Identification of Proposed Action: The proposed action would extend the latest construction completion date of Construction Permit No. CPPR-154 to July 1, 1999. The proposed action is in response to the applicant's request dated November 2, 1984, as modified by letter dated March 10, 1986.

The Need for the Proposed Action: The proposed action is needed because the construction of the facility is not yet fully completed.

Environmental Impact of the Proposed Action: Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. There are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction.

Based on the foregoing, the NRC staff concludes that the proposed extension

of the construction permit would have no significant environmental impact.

Alternatives Considered: A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources: This action does not involve the use of resources other than those evaluated in the FES prepared as part of the NRC staff's review of the construction permit application, NUREG–1033, May 1985.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated November 2, 1984, as modified by letter dated March 10, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room, W.H. Memorial Liberty, 125 Main Street, South, Montesano, Washington 28523.

Dated at Rockville, Maryland, this 5th day of May 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–10430 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

Applications for Licenses To Export Nuclear Facilities or Materials; Transnuclear, Inc.

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows:

NRC Export Applications

Name of applicant, date received, application No.	Material type	Material in total element	Kilograms total isotope	End use	Country of destination
Transnuclear, Inc., 4–28–88, 5–2–88, XSNMO2144–04.	93.3% Enriched Uranium.	Add'l 43.115	Add'l 40.226	Fuel for BR–2 Reactor.	Belgium.
Transnuclear, Inc., 4–27–88, 5–2–88, SXNMO2315–02.	93.3% Enriched Uranium.	Add'l 76.0	Add'l 70.8	Fuel, for HFR Grenoble Research Reactor.	France.
Transnuclear, Inc., 4–28–88, 5–2–88, XSNMO2142	93.0% Enriched Uranium.	Increase to 44.024	Increase to 41.074	Irradiation Tubes for Four Research Reactors.	Belgium, France, Nethelands, and United Kingdom.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

Dated this 5th day of May 1988 at Rockville, Maryland.

[FR Doc. 88–10431 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Improved LWRs; Open Meeting

The ACRS Subcommittee on Improved LWRs will hold a meeting on May 25, 1988, Room, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 25, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will discuss Chapters 3, 4, and 5 of the EPRI ALWR Requirements document.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact one of the above named individuals one or two days before the scheduling meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 5, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–10417 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Open Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on May 26, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, May 26, 1988—8:30 A.M. until the conclusion of business

The Subcommittee will discuss the quality of fasteners in nuclear power plants, BWR reactor pressure vessel in-service inspections, status of the piping erosion-corrosion program, and other matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414), between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: May 5, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–10418 Filed 5–10–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc. (the licensees), for operation of Fermi–2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated March 10, 1988, and supplemented by a letter dated April 21, 1988, the amendment would revise the Fermi–2 Technical Specifications to delete the Non-regenerative Heat Exchanger Outlet Temperature-High signal from the listing of Reactor Water Cleanup (RCWU) system isolation signals.

Prior to issuance of the proposed license amenement, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 10, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license 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 hearing and a petition for leave to intervene.

Requests for a hearing and petitions 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. 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 partcularity 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 a 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 fifteen (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 fifteeen (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 that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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.

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 Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (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 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller; (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 John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

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).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated march 10, 1988, as supplemented April 21, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of May, 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Project Directorate III-1, Division of Reactor Projects III, IV, V & Special Projects.

[FR Doc. 88-10429 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-13435-SC-2; ASLBP No. 88-572-02-SC (Revocation Order)]

May 5, 1988.

Finlay Testing Laboratories, Inc.; Notice of Hearing

Atomic Safety and Licensing Board Panel, Before Administrative Judges: Robert M. Lazo, Chairman, Glenn O. Bright, and Richard F. Cole.

On April 11, 1988, the Deputy Executive Director for Regional Operations issued against Finlay Testing Laboratories, Inc. (Licensee), an "Order Continuing Suspension of License (Effective Immediately) and Order To Show Cause Why License Should Not Be Revoked." The Order recited that on September 21, 1987, Licensee's Byproduct Material License No. 53-17854-01 was suspended by Order entitled "Order Suspending License (Effective Immediately)" pending further investigation of the Licensee. Pursuant to 10 CFR 2.202(f), the September 21, 1987 Order was temporarily effective pending further order. The April 11, 1988 Order addresses the results of the further investigation and continues the suspension directed by the earlier Order.

The April 11, 1988 Order noted that pursuant to 10 CFR 2.202(b), the Licensee may file an answer showing cause why its license should not be suspended and should not be revoked and may also request a hearing on the Order. The issue to be considered at any such hearing is whether the Order continuing suspension of license and Order to show cause why license should not be revoked should be sustained.

On May 2, 1988, the Licensee filed an "Answer To Order Continuing Suspension of License (Effective Immediately) and Order To Show Cause why License Should Not Be Revoked; Demand for Hearing After Discovery."

Wherefore, it is Ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, and Please Take Notice that an evidentiary hearing is this proceeding shall convene at 10 a.m., local time, Wednesday, May 18, 1988 at Room, U.S Coast Guard Legal Office, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, HI 96850.

This "Revocation Order" proceeding shall be consolidated with the "Suspension Order" proceeding concerning the Deputy Director's Order of September 21, 1987.

Members of the public are invited to attend the hearing.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 5th day of May 1988.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 88-10493 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 53-17854-01; Docket No. 30-13435-SC-2; ASLBP No. 88-572-02-SC]

Finlay Testing Laboratories, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Finlay Testing Laboratories, Inc.,
Byproduct Material License No. 53-17854-01 (Revocation Order)

This Board is being designated pursuant to Licensee's request for a hearing regarding an Order issued by the Deputy Executive Director for Regional Operations, dated April 11, 1988, entitled "ORDER CONTINUING SUSPENSION OF LICENSE (EFFECTIVE IMMEDIATELY) AND ORDER TO SHOW CAUSE WHY LICENSE SHOULD NOT BE REVOKED."

The Board is comprised of the following Administrative Judges:

Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 5th day of May 1988.

[FR Doc. 88-10494 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-353]

Philadelphia Electric Co.; Limerick Generating Station, Unit No. 2; Order Extending Construction Completion Date

Philadelphia Electric Company is the holder of Construction Permit CPPR-107 issued by the Commission on June 19, 1974. This permit authorizes construction of the Limerick Generating Station, Unit No. 2, presently under construction at the Company's site on the Schuylkill River, near Pottstown, in Limerick Township, Montgomery County, Pennsylvania.

On August 13, 1987, Philadelphia Electric Company (Applicant) filed a request pursuant to the Code of Federal Regulations, Title 10, Part 50, § 50.55(b) for an extension of the construction completion dates for this unit. The specific request was that the earliest and latest completion dates specified in Construction Permit No. CPPR-107 for Limerick Unit 2 be extended to May 1, 1989 and January 1, 1992, respectively.

The change in the schedule for completion of the construction of Unit 2 results from suspension of construction by Applicant in accordance with the terms of an order issued by the Pennsylvania Public Utility Commission (PaPUC) on December 23, 1983. Such order directed the Applicant to: (1) Suspend construction of Unit 2 pending operation of Unit 1; or (2) cancel Unit 2 or (3) continue construction of Unit 2 solely with internally generated funding. Applicant advised the PaPUC on January 24, 1984 that of the choices available, it had suspended construction of Unit 2 pending operation of Unit 1. As a result of this action all activities at the Unit 2 construction site were suspended during the period from January 1, 1984 to February 1, 1986 except essential activities required to protect the site, the public and workers and actions required to allow a prompt resumption of construction.

The NRC staff has concluded that good cause has been shown for the delay, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the bases for which are set forth in the staff's evaluation of the request for extension dated May 3, 1988.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on January 14, 1988 (53 FR 970). Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment.

The applicant's letter dated August 13, 1987, and the NRC staff's letter and safety evaluation on the request for extension of the construction permit, dated May 3, 1988, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and the local Public Document Room, Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

It is Hereby Ordered that the earliest and latest completion dates for CPPR-107 be extended to May 1, 1989 and January 1, 1992, respectively. Dated at Rockville, Maryland, this 3rd day of May 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-10432 Filed 5-10-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

Extension

Rule 204-1
File No. 270-41
Rule 203-1
Form ADV
File No. 270-39

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 203-1 (17 CFR 275.203-1), Rule 204-1 (17 CFR 275.204-1) and Form ADV (17 CFR 279.1) under the Investment Advisers Act of 1940.

Rule 203-1 prescribes Form ADV as the form for application for registration of investment advisers under the Investment Advisers Act of 1940. The form takes each new registrant about 9 hours to fill out.

Rule 204-1 requires that a registered investment adviser file an amendment to its application for registration on Form ADV under certain circumstances. Each investment adviser spends approximately 1 hour a year complying with the rule.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

May 4, 1988.

[FR Doc. 88-10445 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25653; File No. SR-Amex-88-7]

Self-Regulatory Organizations; Partial Accelerated Approval of a Proposed Rule Change by American Stock Exchange, Inc., Extension of the Rule 126(g) Pilot Program Relating to Precedence Based on Size, and a Reduction to 25,000 Shares of Block Transactions Eligible for Size Precedence

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 126(g) precedence based on size pilot program set forth in SR-Amex-86-14 by reducing the size of block crosses eligible for size precedence from 50,000 shares to 25,000 shares. In addition, the Exchange proposes to extend the pilot program to November 1, 1988.[1]

[1] The Commission originally approved the Exchange's size precedence pilot program for a three month period in Securities Act Release No. 23693, October 9, 1986, 51 FR 37358. Subsequently the Commission approved two extensions of the Amex pilot: Securities Exchange Act Release No. 24240, March 20, 1987, 52 FR 10430, extending the pilot until May 1, 1987, and Securities Exchange Act Release No. 24858, August 27, 1987, 52 FR 33485, extending the pilot until May 1, 1988.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In October 1986, the Amex implemented a three-month pilot program under Amex Rule 126(g), during which orders to cross blocks of 50,000 shares or more would be permitted to have precedence over other bids and offers. (*See* File No. SR–Amex–86–14 and Securities Exchange Act Release No. 23693, October 9, 1986, approving the pilot, for details of the program.) The Exchange has subsequently requested that the pilot program be extended, and it has been most recently extended by the Commission to May 1, 1988. (Securities Exchange Act Release No. 24858, August 27, 1987.) [2]

The Exchange initially limited to 50,000 shares the size of stocks eligible to establish precedence based on size in order to provide a controlled experiment in size precedence and to limit the effect of the pilot to orders to cross in very large size and primarily in active, liquid issues. In the course of the pilot, the Exchange has provided to the Commission specific data, including the number of occasions Amex specialists utilized the block precedence exemption under Rule 126(g); the nature of the stock accorded block precedence; and the total size of the bids and offers "sized out" by the block transactions, among other data.

Based on its experience under the pilot program to date, the Exchange is proposing a limited extension of the program to permit orders to cross blocks of 25,000 shares or more to establish size precedence pursuant to Rule 126(g). These parameters will continue to limit size precedence to blocks of very large size and in active, liquid issues. In addition, inclusion of blocks of 25,000 shares or more will provide the Exchange with a somewhat larger trading data base to assess the success of the pilot program in facilitating the execution of large blocks on the Amex and in reducing the incentive of member firms to route such orders to a regional exchange in order to avoid losing an excessive number of shares to other orders due to Amex's existing priority rules.

The Amex is proposing to extend the pilot program for six months, until November 1, 1988, in order to permit the Exchange sufficient time to monitor and review trading under the 25,000 share parameter and to submit this data to the Commission for its review and assessment of the revised pilot program.

(2) Basis

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 intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–88–7 and should be submitted by June 1, 1988.

IV. Commission Findings and Order Granting Partial Accelerated Approval

In its filing, the Exchange requested accelerated approval for the proposed change in the size of block crosses eligible for size precedence under the Rule 126(g) pilot program from the current level of 50,000 shares to 25,000 shares together with an extension of the pilot until November 1, 1988. The Commission has determined that the proposed change in the size of blocks eleigible for precedence under the Amex Rule 126(g) precedence based on size pilot is a substantive change which should be published for notice and comment in the **Federal Register** prior to a determination by the Commission whether the proposed rule change should be approved.

In view of this determination by the Commission, the Amex has requested that the Rule 126(g) pilot program be extended at its current level of 50,000 shares, on an acelerated basis, until November 1, 1988.[3]

The Commission believes it is appropriate to extend the Amex Rule 126(g) precedence based on size pilot program, at the current level of 50,000 shares, until November 1, 1988. This extension will give the Commission time to evaluate the data on the operation of the pilot at the 50,000 share level provided by the Amex during the pilot to date in order to assess its impact on the routing of block orders from Amex to regional exchanges. Extension of the pilot at this time will permit the program to continue pending a determination by the Commission as to whether the pilot should be approved, ended, or increased in scope (*i.e.*, extended to blocks 25,000 shares).

The Commission finds good cause for approving that portion of the proposed rule change that would extend the Amex Rule 126(g) precedence based on size pilot program from cross blocks of 50,000 shares or greater prior to the thirtieth day after the date of publication of notice of filing thereof so that the Amex's pilot program may continue on an uninterrupted basis. In addition, the Commission has not

[2] *See* note 1, *supra*.

[3] *See* letter from Delia McQuade Emmons, Vice President and Secretary, Amex, to Sharon Lawson, Branch Chief, Division of Market Regulation, dated April 26, 1988.

received any negative comment on the pilot during its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, partially approved, nunc pro tunc as of May 1, 1988, and shall be in effect until November 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10446 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25664; File No. SR-Amex-88-10]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Equity Index Participations Based on the Major Market Index and the Institutional Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade Equity Index Participations based on the Amex Major Market Index ("MMI") and Institutional Index—Major Market Index Paticipations ("MMIPs") and Institutional Index Participations (IIPs). The Exchange proposes to establish a new section 14 (Equity Index Participations) under Exchange options rules, and new Rule 900F *et seq.* to accommodate trading of Equity Index Participations. All language in the proposed rules is new, unless otherwise indicated.

Section 14. Equity Index Participations

Rule 900F. (a) Applicabilty. The Rules in this Section are applicable only to Equity Index Participations. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), 907, 908, 909, 921, 922, 923, 924, 925, 926, 930, 932, 950(b), 950(c), 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 981, 918C. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Equity Index Participations are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

Compliance with Rules 904, 905, 906 shall be determined as set forth in Rules 905F, 906F, and 907F.

(b) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise indicate, have the meanings herein specified.

(1) *Equity Index Participation*—The term Equity Index Participation means a security based on the spot value of an index of stocks, of indeterminate duration, and paying its purchasers a proportionate share of dividends declared on the component stocks of the stock index underlying the Equity Index Participation.

(2) *Cash-Out Time*—The term "cash-out time" means the point in time each quarter of the year when a holder of an Equity Index Participation may obtain the closing index value upon exercise of the cash-out privilege. The cash-out time for each quarter will be determined and made public by the Exchange before the beginning of the quarter

(3) *Reporting Authority*—The term "reporting authority" in respect of a particular index means either the Exchange or the institution or reporting service designated by the Exchange as the official source for calculating and reporting the current index value or the closing index value and the proportionate share of dividends payable to Equity Index Participation holders.

Designation of an Index

Rule 901F. The stocks that are the basis for the calculation of an index on which the Equity Index Participation is based shall be selected by the Exchange and may be revised from time to time in the Exchange's discretion as necessary or appropriate to maintain the quality and character of the index.

Index Calculation

Rule 902F. (a) The current index value in respect of an index on which an Equity Index Participation is based shall be derived from the reported prices of the underlying securities that are the basis of the index, as reported by the primary market for such underlying securities.

(b) The closing index value in respect of a particular Equity Index Participation index shall be derived from the reported prices of the component stocks of the stock index at a time or times specified by the Exchange for determining the payment to which an Equity Index Participation holder is entitled upon exercise of the cash-out privilege.

Dissimination of Information

Rule 903F. (a) The Exchange shall cause to be reported at specified intervals the current index value of an index underlying an Equity Index Participation during each day the Exchange is open for trading, and shall cause to be disseminated the closing index value of such underlying index promptly after such calculation is available at the quarterly cash-out time.

(b) The Exchange shall maintain, in files available to the public, information identifying the stocks included in each index underlying an Equity Index Participation and the method used to determine the current index value.

Cash-Out Privilege

Rule 904F. The holder of an Equity Index Participation shall have the right to obtain on each cash-out time, in accordance with the rules of The Options Clearing Corporation, the closing index value of the specific Equity Index Participation. The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.

Position Limits

Rule 905F. In determining compliance with Rule 904, Equity Index Participations shall be subject to a position limit of 15 million Equity Index Participations with respect to any particular underlying index.

Exercise Limits

Rule 906F. In determining compliance with Rule 905, exercise limits applicable to Equity Index Participations shall be equivalent to the position limits set forth in Rule 905F.

Reporting of Equity Index Participation Positions

Rule 907F. In determining compliance with Rule 906, each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer,

director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 Equity Index Participations (whether long or short) covering the same underlying index.

Exercise of Cash-Out Privilege

Rule 908F. (a) Notice of exercise of the Equity Index Participation cash-out privilege must be provided by a holder of an Equity Index Participation on or before a time specified and made public by the Exchange and which is in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with the The Options Clearing Corporation the Equity Index Participation is carried. Members and member organizations shall establish fixed procedures not inconsistent with the rules and policies of the Exchange and The Options Clearing Corporation, as to the latest hour at which they will accept exercise notices from their customers.

(b) The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise an Equity Index Participation. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the cash-out time (i) in order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange Equity Index Participation transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

Allocation of Equity Index Participation Exercise Notices

Rule 909F. (a) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in Equity Index Participations in such member organization's customers' accounts. Such allocation shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for Equity Index Participations.

(b) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(c) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Bids and Offers

Rule 910F. All bids and offers made on the trading floor for Equity Index Participations shall be deemed to be for one unit of trading unless a specified greater number is expressed in the bid or offer. A bid or offer for more than a unit of trading of Equity Index Participations shall be deemed to be for the amount thereof or a smaller number of units of trading. The unit of trading in Equity Index Participation shall be 100 Equity Index Participations unless otherwise designated by the Exchange.

Commentary .01 Transactions in Equity Index Participations may be effected until 4:15 each business day.

Limitation of Exchange Liability

Rule 911F. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the closing index value and tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot, strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value or the closing index value by the Exchange or the Reporting Authority.

Reserved Authority

Rule 912F. The Exchange may, in its discretion, based on unsubstantial trading activity in Equity Index Participations or under exceptional circumstances, require the holders of and obligors on outstanding Equity Index Participations to settle their contracts at the closing index value determined by a designated cash-out time upon notice of at least one year.

[**Note.**—The following are proposed amendments of existing Amex rules; brackets indicate deletions; italics indicates additions.]

Margin Accounts

Rule 462 (a) through (d)7—No change.

462(d)8. *Equity Index Participations. The margin which must be maintained in margin accounts of customers, whether members, partners of members, member firms, member corporations or stockholders therein or non-members, shall be as follows:*

1. 25% of the market value of all "long" Equity Index Participation positions in the account plus;

2. 30% of the market value, in cash, of each "short" Equity Index Participation position in the account;

3. No margin need be required in respect of an Equity Index Participation carried "short" in a customer's account when the customer has delivered to the member organization carrying the account a letter of guarantee meeting the requirements of Rule 610 of The Options Clearing Corporation certifying that the guarantor holds for the customer as security for the letter (1) cash, (2), cash equivalents, (3) one or more qualified securities, or (4) a combination thereof, that such deposit has a market value, computed as of the close of each business day in which the "short" position is carried in the customer account, of not less than 130% of the aggregate current market value of the Equity Index Participations, and that the guarantor will promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security has the meaning specified in Rule 462 Commentary .04.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex is proposing specific rules applicable to listing and trading of two cash-settled Equity Index Participation securities based on the Exchange's existing Major Market ("MMI") and Institutional Stock Indices, respectively. Equity Index Participations would permit holders to own a security designed to reflect the principal characteristics of ownership of the complement of stocks comprising the MMI and Institutional Indices, but that does not require the actual purchase or sale of shares of common stock of the issuers included in those indices. Unlike stock or index options, MMIPs and IIPs would not have a specific expiration date, but instead would have a perpetual life, subject to the right of the holder, once each quarter, to cash out at the then current index value, and subject further to the right of the Exchange and OCC, under certain circumstances (such as lack of trading activity), upon at least one year's prior notice, to terminate the Equity Index Participations.

It is anticipated that MMIPs and IIPs will be traded like other equity securities, and that transactions will be reported through facilities of the Consolidated Tape Association. MMIP and IIP holders would participate in any appreciation or decline in the MMI or Institutional Indices, as though holding a proportionate number of shares of the component stocks. Similarly, persons holding short positions in these securities would experience approximately the same economic results as that of holding short positions in the underlying stocks. In the event of a cash-out, settlement would be effected by cash payment to the holder from a person holding a short position, with no physical delivery of underlying stocks. Cash-outs, which would be permitted only once each quarter (to coincide with the "triple-witching" options expiration dates), would be assigned among holders of short positions in the same manner as assignment of stock and index option exercises.

Holders would be entitled to receive, and persons holding short positions would be required to pay, quarterly payments equivalent to the amount of dividends declared during such quarter by issuers of underlying index stocks. This would be accomplished by OCC crediting the accounts of holders, and debiting the accounts of persons who are short as of the day prior to cash-out time, a proportionate amount of any regular cash dividends declared on MMI or Institutional Index stocks. Holders would have no voting or other shareholder rights normally accorded to holders of the underlying stocks.

The Exchange proposes that Equity Index Participations be marginable substantially like common stock, with purchasers permitted to borrow up to 50% of the current market value of the MMIPs or IIPs, and sellers required to post margin of 150% of such current market value, as required by Regulation T of the Federal Reserve Board. Maintenance margin would also have to be maintained in accordance with the requirements applicable to equity holdings in an account. The securities would be book entry only. No certificates representing ownership would be issued; instead, records of the clearing corporation, clearing broker-dealers, customer confirmations and account statements would provide evidence of MMIP and IIP positions.

While long or short positions in the securities may always be closed out by offsetting purchase or sale transactions, as indicated above, the holder will also have a "cash-out privilege" exercisable once each quarter. In the event of a cash-out, the holder will be entitled to cash equal to the closing index value on the "cash-out" date times a multiplier established by the Exchange. For MMIPs and IIPs, it is anticipated that the closing index value will be derived from the closing reported prices of the component stocks of the MMI and Institutional Indices, because MMI and Institutional Index values are currently determined for settlement purposes at the close of trading on expiration date.

Because these securities have certain characteristics that are identifiable with options, the Exchange has determined to apply to them certain of its options rules, including rules related to options sales practices. Application of these rules will help assure that the characteristics and risks associated with the securities are adequately disclosed to investors. For the same reason, the Exchange has applied certain of its options trading rules to these securities.

MMI and Institutional Indices: The SEC has approved the Exchange's procedures and rules relating to the Major Market Index, and options traded thereon, in Securities Exchange Act Release No. 34–19709 (April 27, 1983) (File No. SR–Amex–82–22, Amendments No. 1 and No. 2). The SEC has approved procedures and rules relating to the Institutional Index in Securities Exchange Act Release No. 23573, August 28, 1986 (File No. SR–Amex–86–15).

Unit of Trading: Each MMI and Institutional Index security will represent $\frac{1}{10}$—the index multiplier—times the MMI or Institutional Index value, respectively. The standard unit of trading in such securities will be 100 MMIPs or IIPs.

Cash-Out Cycle: The third Friday of March, June, September and December. The dealine for exercising the cash-out privilege will be 4:15 p.m. on the business day immediately prior to the cash-out time. Upon due exercise of the cash-out privilege, the holder of a MMIP or IIP will receive an amount equal to the MMI or Institutional Index value based on the closing index value of such Index.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objective(s) of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988

[FR Doc. 88-10447 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25662; File No. SR-MBS-88-9]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing of Proposed Rule change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes primarily revise and amend the Depository Rules reglating to pledges, application of Net Free Equity and Collateral, and processing of physical withdrawals of Securities. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) The first sentence of the last paragraph of Article II, Rule 2, Section 2 will be modified to reflect the fact that certain Account Transfers occur after Participants have been advised of and have settled their Cash Balances, for example, transfers from MBSCC Transfer Accounts.

(ii) Article II, Rule 3, Section 1 will be modified to clarify where the ownership interest in Securities resides during the course of Account Transfers. In the case of case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest, or, in the case of a pledge, a security interest. In the case of Account Transfers Versus payment, the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment. However, a provision is added to Article II, Rule 4, giving the Corporation a lien on pledge Securities in the event a court deems the Corporation not to have acquired the entire interest in the Securities.

(iii) Article II, Rule 3, Section 2, is amended to provide that if the Corporation does not transfer Securities from an MBSCC Transfer Account to the associated Depository Account of the Receiving Participant after the Receiving Participant has met all its cash settlement obligations to the Corporation because of legal impossibility or other reasons beyond the control of the Corporation, such Securities will be deemed held by the Corporation in trust for the benefit of the Receiving Participant.

(iv) Article II, Rule 3, Section 3, is amended to provide that, in the case of pledges, when the Corporation retransfers its interest in Securities in MBSCC Transfer Accounts, the lending Participant will acquire a security interest in the Securities and the borrowing Participant will reacquaire the ownership interest, subject to the lending Participant's security interest. This Section is also amended make it clear that no Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred.

(v) A new provision is added to Article II, Rule 3, Section 3 providing (consistently with existing Article III, Rule 2, Section 1) that a borrowing Participant is entitled to principal and interest on pledged Securities. The only exception will be that a lending Participant may, by submitting a Securities Access Command (the definition of which is added to Article I, Rule 1), cause the entitlement to principal and interest to shift to itself or its transferee. Under proposed changes to Article II, Rule 11, Section 1(a), a lending Participant which has submitted a Securities Access Command may transfer pledged Securities to the Corporation's Internal Control Account for withdrawal, to another Depository Account of the lending Participant, or to the Depository Account of another Participant.

(vi) Article III, Rule 2, Section 1 is amended to conform to the new provision in Article II, Rule 3, Section 3 noted in (iv) above. The general rule remains that principal and interest will be credited to the Depository Account from which Securities have been transferred to the Pledgee Account (i.e., the borrower's Account). The proposed Rule change provides an exception when the Participant maintaining the Pledgee Account has submitted a Securities Access Command.

(vii) The definition of Market Value in Article I, Rule 1, is amended to include accrued interest.

(viii) Article II, Rule 11, Section 1(c) is modified to allow the use of Proprietary Net Free Equity, to the extent not required to collateralize transactions in Proprietary Accounts, to offset negative Net Free Equity in Agency and Pledgee Accounts.

(ix) Article V, Rule 2, Section 1 is modified to substitute a single

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[1] MBSCC filed an amendment to the proposal on April 19, 1988, to correct typographical errors.

[2] A proposed rule change (File No. SR-MBS-88-8) identical to the present proposal was simulataneously filed on April 11, 1988, by MBSCC. That proposal became effective upon filing and will remain in effect for a period of 120 days.

Participants Fund for the separate Proprietary, Agency and Pledgee Participants Funds previously established. To reflect this change, the definitions of Proprietary, Agency and Pledgee Participants Funds have been deleted from Article I, Rule 1. Under amended Article II, Rule 11, Section 1(c), Collateral in the Participants Fund will be available to offset negative Proprietary, Agency or Pledgee Net Free Equity. References throughout the Rules to multiple Participants Funds have been modified so they now refer to a single Participants Fund.

(x) Article II, Rule 10, Section 2, is amended generally to permit a Participant to withdraw Securities on any day it desires, subject to such conditions and fees as the Corporation may impose. An exception is made for Securities in MBSCC Transfer Accounts unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities.

(xi) Article V, Rule 2 Section 3, is amended to allow a Participant to deposit cash to the Participants Fund to prefund any Debit Balance. Article II, Rule 3, Section 3 is amended to make it clear that such prefunding does not constitute satisfaction of the Participant's cash settlement obligations until such obligations have been finally determined and charged against the Participants Fund. A provision specifically authorizing this charge against the Participants Fund is added to Article II, Rule 2, Section 2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes primarily revise and amend the Depository Rules relating to pledges, operation of the Participants Fund and processing of Account Transfers and physical withdrawals of Securities. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

Pledges

Currently, the Depository's Rules do not describe in detail where the ownership interest resides during the course of Account Transfers, particularly in the case of pledges. The proposed Rule changes will make it clear that, in the case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest or, in the case of a pledge, a security interest. In the case of Account Transfers Versus Payment, the Rules will make it clear that the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment, although a provision will be added giving the Corporation a lien on pledged Securities in the event that a court deems the Corporation not to have acquired the entire interest in the Securities, given the borrowing Participant's ultimate intent only to part with a security interest.

At the end of the day, the Corporation will retransfer its interest in Securities in MBSCC Transfer Accounts to the Depository Accounts of Receiving Participants. Except in the case of pledges, the Receiving Participant will acquire the entire interest in the Securities. In the case of pledges, the lending Participant will acquire a security interest in the Securities and borrowing Participant will reacquire the ownership interest, subject to the lending Participant's security interest. No Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred. The Rules will also provide protection for Participants who have met all their cash settlement obligations to the Corporations in the event that Securities in an MBSCC Transfer Account are not transferred to the associated Depository Account of the Receiving Participant because of legal impossibility or other reasons beyond the control of the Corporation (e.g., if such transfer were prevented by a judicial stay). In the event the Corporation does not transfer the Securities they will be deemed to be held by the Corporation in trust for the benefit of the Receiving Participant.

The Rules currently provide that a borrowing Participant will continue to be entitled to principal and interest on pledged Securities. This will continue to be true under the proposed Rule changes, except that a lending Participant may, by submitting a Securities Access Command, cause the entitlement to principal and interest to shift to itself or its transferee. The Securities Access Command is equivalent to the lender's obtaining physical possession of its collateral pending disposition and does not itself constitute disposition. Having submitted a Securities Access Command, a lender may retransfer pledged Securities to its own Depository Account or the Depository Account of another Participant or withdraw them.

Application of Net Free Equity and Collateral

The proposed Rule changes will effect certain changes in the computation of Net Free Equity. First, in determining the Market Value of Securities includible in Net Free Equity, the Corporation will include accrued interest. Second, Proprietary Net Free Equity, which previously collateralized transactions only in Propietary Accounts, will now, to the extent not required to collateralize such transactions, be available to offset negative Net Free Equity in Agency and Pledgee Accounts. (To protect the property of customers and borrowers, excess Agency or Pledgee Net Free Equity will not similarly be available to offset deficiencies in Proprietary Net Free Equity.) Third, negative Proprietary, Agency or Pledgee Net Free Equity may be offset by any Collateral the Participant has deposited with the Depository, eliminating the need for separate Participants Funds for Proprietary, Agency and Pledgee Accounts. The proposed Rule changes, therefore, replace the separate Participants Funds with a single Participant Fund.

Processing of Physical Withdrawals

The Corporation has withdrawn a prior Rule filing which would have required a delay of up to seven days for withdrawal of physical Securities. The proposed Rule changes generally will permit a Participant to withdraw Securities on any day it desires, subject to such conditions (e.g., cut-off times) and fees as the Corporation may impose. An exception will be made for Securities in MBSCC Transfer Accounts, which may not be withdrawn unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities. This restriction will insure that, in the event the Participant defaults in

payment of its Debit Balance, the Corporation will have cash to pay to Participants with corresponding Credit Balances.

Prefunding of Debit Balances

The Rules previously have not addressed the subject of prefunding of anticipated Debit Balances. Such prefundings have never been viewed as settlement payments, since it is not possible to ascertain a Participant's final settlement obligations until the end of the Business Day, after giving effect to any adjustments to its Cash Balances as a result of transactions with defaulting Participants. The proposed Rule changes make it clear that prefundings are merely contributions to the Participants Fund, which will be charged at the end of the Business Day when a Participant's final settlement obligations have been ascertained.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–8 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: May 4, 1988.

[FR Doc. 88–10452 Filed 5–10–88; 8:45 am]

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[Release No. 34–25663; File No. SR–MBS–88–8]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The changes will be in effect for a period of 120 days from the date of filing of the proposed rule change. The proposed rule changes primarily revise and amend the Depository Rules relating to pledges, application of Net Free Equity and Collateral, and processing of physical withdrawals of Securities. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) The first sentence of the last paragraph of Article II, Rule 2 Section 2 will be modified to reflect the fact that certain Account Transfers occur after Participants have been advised of and have settled their Cash Balances, for example, transfers from MBSCC Transfer Accounts.

(ii) Article II, Rule 3, Section 1 will be modified to clarify where the ownership interest in Securities resides during the course of Account Transfers. In the case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest, or, in the case of a pledge, a security interest. In the case of Account Transfers Versus payment, the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment. However, a provision is added to Article II, Rule 4, giving the Corporation a lien on pledged Securities in the event a court deems the Corporation not to have acquired the entire interest in the Securities.

(iii) Article II, Rule 3, Section 2, is amended to provide that if the Corporation does not transfer Securities from an MBSCC Transfer Account to the associated Depository Account of the Receiving Participant after the Receiving Participant has met all its cash settlement obligations to the Corporation because of legal impossibility or other reasons beyond the control of the Corporation, such Securities will be deemed held by the Corporation in trust for the benefit of the Receiving Participant.

(iv) Article II, Rule 3, Section 3, is amended to provide that, in the case of pledges, when the Corporation retransfers its interest in Securities in MBSCC Transfer Accounts, the lending Participant will acquire a security interest in the Securities and the borrowing Participant will reacquire the ownership interest, subject to the lending Participant's security interest. This Section is also amended to make it clear that no Receiving Participant will

[1] MBSCC filed an amendment to the proposed rule change on April 19, 1988, to correct typographical errors.

acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred.

(v) A new provision is added to Article II, Rule 3, Section 3 providing (consistently with existing Article III, Rule 2, Section 1) that a borrowing Participant is entitled to principal and interest on pledged Securities. The only exception will be that a lending Participant may, by submitting a Securities Access Command (the definition of which is added to Article I, Rule 1), cause the entitlement to principal and interest to shift to itself or its transferee. Under proposed changes to Article II, Rule 11, Section 1(a), a lending Participant which has submitted a Securities Access Command may transfer pledged Securities to the Corporation's Internal Control Account for withdrawal, to another Depository Account of the lending Participant, or to the Depository Account of another Participant.

(vi) Article III, Rule 2, Section 1 is amended to conform to the new provision in Article II, Rule 3, Section 3 noted in (iv) above. The general rule remains that principal and interest will be credited to the Depository Account from which Securities have been transferred to the Pledgee Account (i.e., the borrower's Account). The proposed Rule change provides an exception when the Participant maintaining the Pledgee Account has submitted a Securities Access Command.

(vii) The definition of Market Value in Article I, Rule 1, is amended to include accrued interest.

(viii) Article II, Rule 11, Section 1(c) is modified to allow the use of Proprietary Net Free Equity, to the extent not required to collateralize transactions in Proprietary Accounts, to offset negative Net Free Equity in Agency and Pledgee Accounts.

(ix) Article V, Rule 2, Section 1 is modified to substitute a single Participants Fund for the separate Proprietary, Agency and Pledgee Participants Funds previosuly established. To reflect this change, the definitions of Propriety, Agency and Pledgee Participants Funds have been deleted from Article I, Rule 1. Under amended Article II, Rule 11, Section 1(c), Collateral in the Participants Fund will be available to offset negative Proprietary, Agency or Pledgee Net Free Equity. References throughout the Rules to multiple Participants Funds have been modified so they now refer to a single Participants Fund.

(x) Article II, Rule 10, Section 2, is amended generally to permit a Participant to withdraw Securities on any day it desires, subject to such conditions and fees as the Corporation may impose. An exception is made for Securities in MBSCC Transfer Accounts unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities.

(xi) Article V, Rule 2, Section 3, is amended to allow a Participant to deposit cash to the Participants Fund to prefund any Debit Balance. Article II, Rule 3, Section 3, is amended to make it clear that such prefunding does not constitute satisfaction of the Participant's cash settlement obligations until such obligations have been finally determined and charged against the Participants Fund. A provision specifically authorizing this charge against the Participants Fund is added to Article II, Rule 2, Section 2.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes primarily revised and amend the Depository Rules relating to pledges, operation of the Participants Fund and processing of Account Transfers and physical withdrawals of Securities. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

Pledges

Currently, the Depository's Rules do not describe in detail where the ownership interest resides during the course of Account Transfers, particularly in the case of pledges. The proposed Rule changes will make it clear that, in the case of Account Transfers not Versus Payment, the transferee will immediately acquire an interest in the transferred Securities, which will be either the entire interest or, in the case of a pledge, a security interest. In the case of Account Transfers Versus Payment, the Rules will make it clear that the Corporation will acquire the entire interest in Securities which have been credited to MBSCC Transfer Accounts. This will be true even in the case of pledges Versus Payment, although a provision will be added giving the Corporation a lien on pledged Securities in the event that a court deems the Corporation not to have acquired the entire interest in the Securities, given the borrowing Participant's ultimate intent only to part with a security interest.

At the end of the day, the Corporation will retransfer its interest in Securities in MBSCC Transfer Accounts to the Depository Accounts of Receiving Participants. Except in the case of pledges, the Receiving Participant will acquire the entire interest in the Securities. In the case of pledges, the lending Participant will acquire a security interest in the Securities and borrowing Participant will reacquire the ownership interest, subject to the lending Participant's security interest. No Receiving Participant will acquire an interest in Securities unless it has settled its cash settlement obligations to the Corporation and the Corporation has announced to all Participants that settlement has occurred. The Rules will also provide protection for Participants who have met all their cash settlement obligations to the Corporation in the event that Securities in an MBSCC Transfer Account are not transferred to the associated Depository Account of the Receiving Participant because of legal impossibility or other reasons beyond the control of the Corporation (e.g., if such transfer were prevented by a judicial stay). In the event the Corporation does not transfer the Securities they will be deemed to be held by the Corporation in trust for the benefit of the Receiving Participant.

The Rules currently provide that a borrowing Participant will continue to be entitled to principal and interest on pledged Securities. This will continue to be true under the proposed Rule changes, except that a lending Participant may, by submitted a Securities Access Command, cause the entitlement to principal and interest to shift to itself or its transferee. The Securities Access Command is equivalent to the lender's obtaining physical possession of its collateral pending disposition and does not itself constitute disposition. Having submitted a Securities Access Command, a lender may retransfer pledged Securities to its own Depository Account or the

Depository Account of another Participant or withdraw them.

Application of Net Free Equity and Collateral

The proposed Rule changes will effect certain changes in the computation of Net Free Equity. First, in determining the Market Value of Securities includible in Net Free Equity, the Corporation will include accrued interest. Second, Proprietary Net Free Equity, which previously collateralized transactions only in Proprietary Accounts, will now, to the extent not required to collateralize such transactions, be available of offset negative Net Free Equity in Agency and Pledgee Accounts. (To protect the property of customers and borrowers, excess Agency or Pledgee Net Free Equity will not similarly be available to offset deficiencies in Proprietary Net Free Equity.) Third, negative Proprietary, Agency of Pledgee Net Free Equity may be offset by any Collateral the Participant has deposited with the Depository, eliminating the need for separate Participants Funds for Proprietary, Agency and Pledgee Accounts. The proposed Rule changes, therefore, replace the separate Participants Funds with a single Participants Fund.

Processing of Physical Withdrawals

The Corporation has withdrawn a prior Rule filing which would have required a delay of up to seven days for withdrawal of physical Securities. The proposed Rule changes generally will permit a Participant to withdraw Securities on any day it desires, subject to such conditions (e.g., cut-off times) and fees as the Corporation may impose. An exception will be made for Securities in MBSCC Transfer Accounts, which may not be withdrawn unless a Participant has on deposit in the Participants Fund cash, in excess of the Minimum Deposit, in an amount equal to the Contract Value of the Securities. This restriction will insure that, in the event the Participant defaults in payment of its Debit Balance, the Corporation will have cash to pay to Participants with corresponding Credit Balances.

Prefunding of Debit Balances

The Rules previously have not addressed the subject of prefunding of anticipated Debit Balances. Such prefundings have never been viewed as settlement payments, since it is not possible to ascertain a Participant's final settlement obligations until the end of the Business Day, after giving effect to any adjustments to its Cash Balances as a result of transactions with defaulting Participants. The proposed Rule changes make it clear that prefundings are merely contributions to the Participants Fund, which will be charged at the end of the Business Day when a Participant's final settlement obligations have been ascertained.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed in competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing Rule changes will become effective on April 11, 1988 pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed Rule changes, the Commission may summarily abrogate such Rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MBS–88–8 and should be submitted by June 1, 1988. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 4, 1988.

[FR Doc. 88–10453 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25660; File No. SR–MBS–88–7]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes revise and amend provisions relating to the operation of Depository Accounts. The following is a summary of the material changes. Capitalized terms have the same meanings ascribed to them in the Depository Rules.

(i) Article II, Rule 1, Section 1, is modified to make it clear that there will be at least one Seg Account associated with each Propietary and Agency

[1] MBSCC filed an amendment to the proposal on April 19, 1988, to correct typographical errors.

[2] A proposed rule change (File No. SR–MBS–88–6) identical to the present proposal was simultaneously filed on April 1, 1988, by MBSCC. That proposal became effective upon filing and will remain in effect for a period of 120 days.

Account. Additional Seg Account may be offered upon a Participant's request as the Corporation's operational capability permits.

(ii) A new Section 5 is added to Article II, Rule 3, requiring that (A) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (B) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (C) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an agent's customer be transferred to an associated Seg Account.

(iii) Article II, Rule 4, is modified to grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account).

(iv) Article II, Rule 7, Section 1, is modified to include in the computation of Agency Net Free Equity the Applicable Percentage of Market Value of Securities in a Participant's Agency Account (with respect to which the Corporation will now have a lien).

(v) Former Article II, Rule 7, Section 2, relating to the transfer of Securities in Agency Accounts to the MBSCC Depository Pledgee Account has been eliminated. The definition of "MBSCC Depository Pledgee Account" and references to that account in the definition of "Applicable Percentage," and "Pledgee Account" previously appearing in Article I, Rule 1, have also been eliminated, as have references in Article II, Rule 4, and Article II, Rule 5, Section 1(b), to the Corporation's lien on Securities in that account.

(vi) A provision in Article II, Rule 3, Section 3, that permitted a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity, has also been eliminated.

(vii) Article II, Rule 1, Section 3, is modified to (a) make it clear that the representation regarding the ownership of Securities in Proprietary Accounts applies only at the time Securities are deposited into or transferred to such account (since such Securities may subsequently be resold to a customer) and at the time they are transferred out to another Account other than an associated Seg Account, (b) require a representation of conformity with applicable customer agreements for Securities deposited in or transferred to/from Seg Accounts, and (c) add a representation regarding compliance with the newly imposed segregation requirements.

(viii) Artible II, Rule 10, Section 1, is modified to require deposits of Securities directly into Agency Seg Accounts, while Article II, Rule 11, Section 1(a), is modified to permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated. Because Securities may be transferred directly from Agency Seg Accounts, Article II, Rule 11, Section 2 (as well as the related definition in Article I, Rule 1) is modified to make Bind Instructions applicable to Agency Seg Accouts. Similarly, Article II, Rule 8, (and the related definition in Article I, Rule 1), is modified to make the Minimum Denomination Requirements applicable to Agency Seg Accounts.

(ix) Article II, Rule 2, Section 2, as well as related definitions in Article I, Rule 1, are modified to provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance (rather than the former Agency Transfer Cash Balance) and deliveries of Securities Versus Payment from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance (rather than the former Agency Cash Balance). Article II, Rule 7 includes in the computation of Agency Net Free Equity only the Participant's Agency Cash Balance, but under Article II, Rule 13, an agent is permitted to effect a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes are intended primarily to protect customers who have fully paid their agents for their securities while assuring that all transactions Versus Payment in Agency Accounts are adequately collaterized. The changes will conform the Rules to the Corporation's actual practice, which in turn is based on the operation of the Depository's computer system. Capitalized terms used herein have the same meanings ascribed to them in the Depository's Rules. Currently, the Depository's Rules contemplate that all Securities held by an agent will be deposited into its Agency Account, with respect to which the Corporation has no lien. Receipts of Securities by an agent Versus Payment initially are credited to an MBSCC Agency Transfer Account associated with the Agency Account and, at the end of the Business Day, upon payment by the agent of its Agency Transfer Debit Balance, are transferred to the Agency Account. While Securities reside in the MBSCC Agency Transfer Account, the Applicable Percentage of their Market Value is included in the agent's Agency Net Free Equity. Once the Securities have been credited to the Agency's Account, the Rules currently state that they no longer are includible in Agency Net Free Equity unless the agent requests that the Securities remain in the Agency Transfer Account or transfers the Securities to the MBSCC Depository Pledgee Account (i.e., because the agent has financed the customer's purchase of the Securities and is entiled under its customer agreement to grant the Corporation a lien).

The Depository's computer system does not automatically subtract from Agency Net Free Equity the Applicable Percentage of the Market Value of Securities which have been transferred from the Agency Transfer Account to the Agency Account. To effect this subtraction, an agent must retransfer the Securities to an Agency Seg Account, and all agents have been informed of this requirement in the Depository's training program. If an agent fails to retransfer the Securities, the Depository's computer system will continue to give the agent Agency Net Free Equity credit for the Applicable Percentage of the Market Value of the Securities remaining in the Agency Account even though the Corporation has no lien on such Securities. As a

result, the Corporation could be holding insufficient collateral to secure the agent's obligations to the Corporation.

The following is a summary of the material Rules changes the Depository proposes to make to eliminate this potential problem, as well as to make certain other clarifications in the operation of Depository Accounts:

Segregation Requirements. A new section will be added to the Depository Rules requiring that (a) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (b) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (c) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an Agent's customer be transferred to an associated Seg Account. To facilitate Participant's compliance with these segregation requirements, the Depository is introducing a bulk segregation capability in its computer system. Instead of transferring Securities on a pool-by-pool basis to Seg Accounts, Participants will be able to transfer quantities of Securities with a single Account Transfer instruction.

Lien on Securities in Agency Accounts. The proposed Rule changes grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account). Because the Corporation will have a lien on securities on Agency Accounts, the computation of Agency Net Free Equity will be modified to include the Applicable Percentage of Market Value of Securities in Agency Accounts. Given the Corporation's lien on Securities in Agency Accounts, the MBSCC Depository Pledgee Account will be eliminated as unnecessary, as will the provison which previously allowed a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity.

Deposits to and Withdrawals and Transfers From Agency Seg Accounts. To insure that the Corporation's lien does not attach to fully paid for customer Securities, the proposed Rule changes will require deposits of Securities directly into Agency Seg Accounts and will permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated.

Separate Computation of Agency Cash Balances and Agency Seg Cash Balances. The proposed Rule changes provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance, while deliveries of Securities from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance. To prevent proceeds from the sale of fully paid for customer Securities in Agency Seg Accounts from counting toward Agency Net Free Equity, the proposed Rule changes will include only Agency Cash Balances in the computation of Agency Net Free Equity. An agent entitled to use such proceeds may do so by effecting a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

The proposed Rule changes are consistent with Section 17A of the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–7 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: May 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–10450 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25661; File No. SR–MBS–88–6]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The

[1] MBSCC filed an amendment to the proposed rule change on April 19, 1988, to correct typographical errors.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The changes will be in effect for a period of 120 days from the date of filing of the proposed rule change.

The proposed Rule changes revise and amend provisions relating to the operation of Depository Accounts. The following is a summary of the material changes. Capitalized terms have the same meanings ascribed to them in the Depository Rules.

(i) Article II, Rule 1, Section 1, is modified to make it clear that there will be at least one Seg Account associated with each Proprietary and Agency Account. Additional Seg Accounts may be offered upon a Participant's request as the Corporation's operational capability permits.

(ii) A new section 5 is added to Article II, Rule 3, requiring that (A) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (B) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (C) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an agent's customer be transferred to an associated Seg Account.

(iii) Article II, Rule 4, is modified to grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account).

(iv) Article II, Rule 7, Section 1, is modified to include in the computation of Agency Net Free Equity the Applicable Percentage of Market Value of Securities in a Participant's Agency Account (with respect to which the Corporation will now have a lien).

(v) Former Article II, Rule 7, Section 2, relating to the transfer of Securities in Agency Accounts to the MBSCC Depository Pledgee Account has been eliminated. The definition of "MBSCC Depository Pledgee Account" and references to that account in the definition of "Applicable Percentage," and "Pledgee Account" previously appearing in Article I, Rule 1, have also been eliminated, as have references in Article II, Rule 4, and Article II, Rule 5, Section 1(b), to the Corporation's lien on Securities in that account.

(vi) A provision in Article II, Rule 3, Section 3, that permitted a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity, has also been eliminated.

(vii) Article II, Rule 1, Section 3, is modified to (a) make it clear that the representation regarding the ownership of Securities in Proprietary Accounts applies only at the time Securities are deposited into such account (since such Securities may subsequently be resold to a customer) and at the time they are transferred out to another Account other than an associated Seg Account, (b) require a representation of conformity with applicable customer agreements for Securities deposited in or transferred to/from Seg Accounts, and (c) add a representation regarding compliance with the newly imposed segregation requirements.

(viii) Article II, Rule 10, Section 1, is modified to require deposits of Securities directly into Agency Seg Accounts, while Article II, Rule 11, Section 1(a), is modified to permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated. Because Securities may be transferred directly from Agency Seg Accounts, Article II, Rule 11, Section 2 (as well as the related definition in Article I, Rule 1) is modified to make Bind Instructions applicable to Agency Seg Accounts. Similarly, Article II, Rule 8, (and the related definiton in Article I, Rule 1), is modified to make the Minimum Denomination Requirements applicable to Agency Seg Accounts.

(ix) Article II, Rule 2, Section 2, as well as related definitions in Article I, Rule 1, are modified to provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance (rather than the former Agency Transfer Cash Balance) and deliveries of Securities Versus Payment from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance (rather than the former Agency Cash Balance). Article II, Rule 7 includes in the computation of Agency Net Free Equity only the Participant's Agency Cash Balance, but under Article II, Rule 13, an agent is permitted to effect a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes are intended primarily to protect customers who have fully paid their agents for their securities while assuring that all transactions Versus Payment in Agency Accounts are adequately collateralized. The changes will conform the Rules to the Corporation's actual practice, which in turn is based on the operation of the Depository's computer system. Capitalized terms used herein have the same meanings ascribed to them in the Depository's Rules. Currently, the Depository's Rules contemplate that all Securities held by an agent will be deposited into its Agency Account, with respect to which the Corporation has no lien. Receipts of Securities by an agent Versus Payment initially are credited to an MBSCC Agency Transfer Account associated with the Agency Account and, at the end of the Business Day, upon payment by the agent of its Agency Transfer Debit Balance, are transferred to the Agency Account. While Securities reside in the MBSCC Agency Transfer Account, the Applicable Percentage of their Market Value is included in the agent's Agency Net Free Equity. Once the Securities have been credited to the Agency Account, the Rules currently state that they no longer are includible in Agency Net Free Equity unless the agent requests that the Securities remain in the Agency Transfer Account or transfers the Securities to the MBSCC Depository Pledgee Account (i.e., because the agent has financed the customer's purchase of the Securities and is entitled under its customer agreement to grant the Corporation a lien).

The Depository's computer system does not automatically subtract from

Agency Net Free Equity the Applicable Percentage of the Market Value of Securities which have been transferred from the Agency Transfer Account to the Agency Account. To effect this subtraction, an agent must retransfer the Securities to an Agency Seg Account, and all agents have been informed of this requirement in the Depository's training program. If an agent fails to retransfer the Securities, the Depository's computer system will continue to give the agent Agency Net Free Equity credit for the Applicable Percentage of the Market Value of the Securities remaining in the Agency Account even though the Corporation has no lien on such Securities. As a result, the Corporation could be holding insufficient collateral to secure the agent's obligations to the Corporation.

The following is a summary of the material Rules changes the Depository proposes to make to eliminate this potential problem, as well as to make certain other clarifications in the operation of Depository Accounts:

Segregation Requirements. A new section will be added to the Depository Rules requiring that (a) Securities in Proprietary Accounts which have been fully paid for by a Participant's customer be moved to an associated Seg Account in accordance with applicable Securities and Exchange Commission requirements, (b) Securities which have been fully paid for by an agent's customer at the time of deposit be deposited in a Seg Account associated with the agent's Agency Account and (c) Securities which have been transferred from an MBSCC Agency Transfer Account to an Agency Account which have been fully paid for by an Agent's customer be transferred to an associated Seg Account. To facilitate Participants' compliance with these segregation requirements, the Depository is introducting a bulk segregation capability in its computer system. Instead of transferring Securities on a pool-by-pool basis to Seg Accounts, Participants will be able to transfer quantities of Securities with a single Account Transfer instruction.

Lien on Securities in Agency Accounts. The proposed Rule changes grant the Corporation a lien on Securities in Agency Accounts (except to the extent transferred to an associated Seg Account). Because the Corporation will have a lien on securities in Agency Accounts, the computation of Agency Net Free Equity will be modified to include the Applicable Percentage of Market Value of Securities in Agency Accounts. Given the Corporation's lien on Securities in Agency Accounts, the MBSCC Depository Pledgee Account will be eliminated as unnecessary, as will the provision which previously allowed a Participant to request that Securities remain in the MBSCC Agency Transfer Account and thereby remain subject to the Corporation's lien and includible in the computation of Agency Net Free Equity.

Deposits to and Withdrawals and Transfers from Agency Seg Accounts. To insure that the Corporation's lien does not attach to fully paid for customer Securities, the proposed Rule changes will require deposits of Securities directly to Agency Seg Accounts and will permit withdrawals and transfers of Securities directly from Agency Seg Accounts without any intervening transfer to the Agency Accounts with which such Seg Accounts are associated.

Separate Computation of Agency Cash Balances and Agency Seg Cash Balances. The proposed Rule changes provide for computation of separate Agency Cash Balances and Agency Seg Cash Balances. Receipts of Securities into an Agency Account Versus Payment will result in debits to the Agency Cash Balance, while deliveries of Securities from Agency Seg Accounts will result in credits to the Agency Seg Cash Balance. To prevent proceeds from the sale of fully paid for customer Securities in Agency Seq Accounts from counting toward Agency Net Free Equity, the proposed Rule changes will include only Agency Cash Balances in the computation of Agency Net Free Equity. An agent entitled to use such proceeds may do so by effecting a funds transfer from its Agency Seg Cash Balance to its Agency Cash Balance.

The proposed Rule changes are consistent with Section 17A of the Securities Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MBS–88–6 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: May 4, 1988.

[FR Doc. 88–10451 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-25658; File No. SR-MBS-88-10]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes effect miscellaneous changes to the Depository Rules. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) Article II, Rule 11, section 3, and the related definition in Article I, Rule 1, are amended to make it clear that a Hold Par Instruction is available with respect to a specified principal amount of Securities having a designated CUSIP or pool number and not necessarily all Securities having such CUSIP or pool number.

(ii) A new section 7 is added to Rule 1 of Article III authorizing the Corporation to surrender the certificates representing deposited GNMA Securities to the issuer or transfer agent for cancellation upon or as a condition of receiving final payment of principal and interest on such GNMA Securities.

(iii) Article I, Rule 3, is amended to make it clear that all deposited Securities will be registered in the name of the Corporation or its nominee subject to the right of the Corporation to maintain Securities directly or through an intermediary in any Federal Reserve Bank. A similar provision in Article II, Rule 10, section 1 requiring use of nominees is deleted.

(iv) Article II, Rule 2, section 2(a) and 2(c) are amended to make it clear that the Cash Balance of a Participant's Proprietary, Agency or Pledgee Account may be charged for any amounts payable as a result of the maintenance of such Account.

(v) Article II, Rule 5, section 1, is amended to make it clear that the Corporation, in pledging Securities held in MBSCC Transfer Accounts and other Collateral to its bank lenders, may pledge such Securities and other Collateral to its bank lenders by book-entry on the books of the Corporation or otherwise or by physical delivery.

(vi) Article II, Rule 6, section 1, is amended to make it clear that assessments and payments of interest to compensate for settlement delays will be based only on Debit or Credit Balances resulting from receipt or delivery of Securities Versus Payment.

(vii) Article III, Rule 2, section 2, is amended to require Participants to pay the Corporation's financing costs for principal and interest advances, without any offset for earnings on prepayments of principal and interest.

(viii) Article V, Rule 2, section 2 is amended to increase the Minimum Deposit to the Participants Fund to $150,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Staement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed Rule changes effect miscellaneous changes to the Depository Rules. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

Surrender of GNMA Certificates Upon Final Payment. The Corporation is responsible for collecting principal and interest on deposited GNMA Securities for distribution to Participants. In order for the Corporation to collect the final principal and interest payment on GNMA Securities that have matured, the certificates representing those Securities must be surrendered to the issuer or transfer agent for cancellation. The Rules will make it clear that the Corporation may surrender the certificates for such Securities in accordance with applicable GNMA procedures.

Hold Par Instruction. The Rules will make it clear that the Hold Par Instruction is available with respect to a specified principal amount of Securities having a designated CUSIP or pool number and not necessarily all Securities having such CUSIP or pool number.

Use of Nominees. An inconsistency between provisions of the Rules mandating the use of nominees and making the use of nominees optional will be eliminated. It will be made clear that all deposited Securities will be registered in the name of the Corporation or its nominee, subject to the right of the Corporation to maintain Securities (e.g., FHLMC or FNMA Securities should they be designated as Eligible Securities) directly or through an intermediary in any Federal Reserve Bank.

Book-Entry Pledges by the Corporation. It will be made clear that the Corporation, in pledging Securities held in MBSCC Transfer Accounts and other Collateral to its bank lenders to obtain funds to cover a Participant default, may pledge such Securities or other Collateral by book-entry on the books of the Corporation or otherwise or by physical delivery.

Charges to Participants' Cash Balances. It will be made clear that the Corporation has the right to charge the Cash Balances of Participants' Proprietary, Agency or Pledgee Accounts for any amounts that are payable as a result of the maintenance of such Accounts and not merely fees. This would include, for example, repayment of principal and interest advanced to the Participant where the Corporation did not subsequently get payment from the issuer or paying agent pursuant to Article III, Rule 2, section 2, or principal and interest paid to a Participant on withdrawn Securities that are in that Participant's Repo In position pursuant to Article III, Rule 2, section 3.

Compensation for Settlement Delays. If the Corporation must delay settlements until a later day, the Rules currently give it the right to assess Participants with Debit Balances interest on the amount of such Debit Balances to the date settlement actually occurs and to pay such interest to Participants with Credit Balances. The proposed Rules will make it clear that such assessments and payments are based only on Debit or Credit Balances resulting from receipt or delivery of Securities Versus Payment. This will assure that no Participant is assessed interest on other items charged to its

[1] MBSCC filed an amendment to the proposed rule change on April 19, 1988, to correct typographical errors.

Debit Balances (e.g., fees for the Depository's services).

Suspension of Processing of Account Transfers. The Rules presently give the Corporation the right to cease to act for a Participant either generally or with respect to particular transactions. A new provision in the Rules will make it clear that, pursuant to this right, the Corporation may suspend processing of Account Transfers in all Depository Accounts of a Participant which is unable to cure a deficiency in Net Free Equity in any of its Depository Accounts. Under such circumstances, the Corporation may conclude that there is some risk that the Participant will be unable to settle its obligations to the Corporation and therefore that the Participant should not be permitted to increase the amount of those obligations.

Elimination of Credit for Prepaid Principal and Interest. Currently, if the Corporation advances principal and interest to a Participant that it has not collected from the issuer or paying agent, the Corporation assesses the Participant for its borrowing costs. Such assessment is reduced by any income the Corporation earns as a result of prepayments of principal and interest. The proposed change will eliminate this reduction.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

Increase in Minimum Participants Fund Deposit. The Rules currently provide for a Minimum Deposit in cash to the Participants Fund of $10,000 or such higher amount as the Corporation may determine. The proposed Rule Changes will increase the Minimum Deposit in cash to $150,000.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed Rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants.

Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MBS–88–10 and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: May 4, 1988.

[FR Doc. 88–10448 Filed 5–10–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–25659; File No. SR–MBS–88–11]

Self-Regulatory Organizations; Proposed Depository Division Rule Changes by MBS Clearing Corp.; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1988, MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exhibit A in file contains the proposed changes to the Depository Division ("Depository") Rules of MBSCC. The proposed Rule changes include addition of provisions for settlement on the basis of duplicate records made by the Corporation prior to a computer system failure, with subsequent interest adjustments when operations are restored; a specific exclusion from Participants' indemnification obligations of the costs of remedying computer systems problems; elimination of provisions making letters of credit eligible for deposit in the Participants Fund; addition of a provision for payment of interest on cash deposits to the Participants Fund and addition of provisions relating to participation of registered government securities brokers and dealers. The following is a summary of the material changes. Capitalized terms used herein have the same meanings ascribed to them in the Depository Rules.

(i) A new Rule 6 is added to Article II providing for the settlement of transactions in the event of failure of the Corporation's computer system based on duplicate records made periodically during the Business Day. As a result of this addition, all subsequent Rules in Article II are renumbered, and cross-references throughout the Rules are changed. Renumbered Rule 7 (formerly Rule 6) is amended by the addition of a new section 3 which provides for assessment of interest against Participants whose cash Balances are decreased when the system is again operational and payment of such interest to Participants whose cash Balances are increased.

[1] MBSCC filed an amendment to the proposal on April 19, 1988.

(ii) Article IV, Rule 1, section 11, is amended to make it clear that Participants' indemnification obligations do not extend to the cost of remedying computer systems problems.

(iii) Article IV, Rule 1, section 11, is also amended to make it clear that when a Participant defaults on its indemnification obligations other Participants who dealt with the defaulting Participant are subject to assessment including those who received credits of Securities rather than cash as a result of transactions with the defaulting Participant.

(iv) Article III, Rule 2, section 4 is amended to extend the Corporation's right to reverse erroneous credits of principal and interest to Participant's Depository Accounts which occur for any reason not merely those resulting from issuer or paying agent error.

(v) Article V, Rule 2, section 3, is amended by the deletion of former clause (c) which allowed letters of credit to be deposited in the Participants Fund. Former section 6 of Article V, Rule 2, which contained special provisions relating to letters of credit, has been eliminated. Article I, Rule 1 is amended to delete reference to letters of credit in the definition of Collateral Value and to make it clear that Excess Market Margin Defferential will exclude any portion of Clearing Division Participants Fund deposits represented by letters of credit.

(vi) Article V, Rule 2, section 4, is amended by deletion of a provision entitling the Corporation to all income from the investment of cash deposits to the Participants Fund and substitution of a provision requiring the Corporation to pay interest on such deposits at a rate determined from time to time.

(vii) Article IV, Rule 1, section 1, is amended to provide for participation by brokers and dealers registered pursuant to section 15C of the Securities Exchange Act of 1934; and Article IV, Rule 1, section 8, is amended to permit such brokers and dealers to satisfy their financial reporting obligations by submitting copies of their Form G–405 Reports on Finances and Operations to the U.S. Department of Treasury.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes are intended to mitigate the impact of Participants of a computer systems failure, compensate Participants for cash deposits in the Participants Fund, improve the quality of Collateral in the Participants Fund and permit the participation of qualified registered government securities brokers and dealers. Capitalized terms herein have the same meanings ascribed to them in the Depository's Rules.

Settlement in the Event of System Failure. Currently, if the Depository's computer system fails, settlement of Depository transactions cannot occur, even though the Depository makes duplicate records of Securities in Participants' Depository Accounts and related Cash Balances periodically during the Business Day. The proposed Rule changes will permit the Corporation to transfer Securities, and require Participants to settle their Cash Balances, on the basis of the most recent duplicate record. The next day that the system is operational, the Corporation will process those Account Transfers that were not processed because of the system failure, and Participants' Cash Balances will be debited or credited appropriately. Participants whose cash Balances are thereby decreased will be assessed interest, which will be passed through to Participants whose cash Balances are thereby increased.

Indemnification. The proposed Rule changes will make it clear that Participants' indemnification obligations do not extend to the cost of remedying computer systems problems. The proposed Rule changes will also make it clear that when a Participant defaults on its indemnification obligations to the Corporation, the other Participants who dealt with the defaulting participant are subject to assessment, including explicitly those who received credits of Securities rather than cash as a result of their transactions with the defaulting Participant.

Adjustments to Principal and Interest Payments. The proposed Rule change will extend the Corporation's right to reverse erroneous credits of principal and interest to Participants' Depository Accounts which occur for any reason and not merely as a result of issuer or paying agent error. This would include reasons like data processing errors.

Letters of Credit. The proposed Rule changes will eliminate letters of credit as an acceptable form of deposit to the participants Fund. Currently, the Corporation may hold letters of credit issued by one bank Participant in favor of another Participant, thereby increasing the Corporation's risk exposure. The proposed change will eliminate this exposure. Cash and approved U.S. Government securities will continue as the only acceptable form of Participants Fund deposits.

Interest on Participants Fund Deposits. The proposed Rule changes will require the Corporation to pay interest on cash deposits to the Participants Fund at a rate announced from time to time. Currently, all earnings on cash deposits accrue to the benefit of the Corporation.

Participation of Government Securities Brokers and Dealers. Currently brokers and dealers registered under section 15 of the Securities Exchange Act of 1934 are eligible for participation. The proposed changes will also make eligible government securities brokers and dealers registered pursuant to section 15C. Just as brokers and dealers registered under section 15 may satisfy their financial reporting obligations by submitting Form X–17A–5 FOCUS Reports to the Commission, brokers and dealers registered under section 15C may satisfy their financial reporting obligations by submitting Form G–405 Reports on Finances and Operations to the U.S. Department of Treasury.

The proposed Rule changes are consistent with section 17A of the Securities Exchange Act of 1934 in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed Rule changes have been discussed with the Depository's Risk Management Committee and reviewed and approved by the Corporation's Board of Directors, each of which consists of representatives of various classes of Depository Participants. Copies of the text of the proposed Rule changes will be distributed to all Depository Participants for comments. The Corporation will promptly notify the

Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Submissions should refer to the File No. SR-MBS-88-11 and should be submitted by June 1, 1988. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10449 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25668; File No. SR-MCC-88-06]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corp. Relating to ACAT's Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the fee schedule for MCC's Automated Customer Account Transfer Service (ACATS) as follows:

Service	Fee
Transfer Initiation Form, (TIF) Imput	$1.00
TIF Adjustments	.12
Asset Adds, Deletes, Changes	.12
Settled Positions	.12
Rec/Del Instructions	.25

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filling with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed fee schedule establishes fees for the use of the Automated Customer Account Transfer Service. Generally, the fees were developed with a view to accurately reflect the actual costs of the service.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(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 proposed rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88-10557 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25669; File No. SR-NASD-87-13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the National Association of Securities Dealers Amending the Rules of Fair Practice and Schedule D of the By-Laws To Provide Trading Halt Procedures

I. Introduction

On February 20, 1987, the National Association of Securities Dealers ("NASD") filed a proposed rule change (File No. SR-NASD-87-13) pursuant to section 19 of the Securities Exchange Act of 1934 ("Act") to provide procedures for the NASD to prohibit its members from trading in NASDAQ and exchange-listed securities pending dissemination of material information from the issuer.[1] Notice of the proposal

[1] The NASD solicited comments from its members on this proposal and submitted the proposal for a membership vote. NASD Notices to Members 86-13 (February 21, 1986) and 86-83 (December 31, 1986).

Continued

was published in the **Federal Register** on March 12, 1987.[2] The Commission received one comment in response.[3] This order approves the proposal.

II. Description of the Proposal

The proposal amends the NASD's Rules of Fair Practice by adding Article III, section 42 to prohibit any NASD member or associated person from effecting any transactions in the over-the-counter market in a security subject to an NASD-called trading halt.[4] The proposal also amends Schedule D of the NASD's By-Laws by adding procedures to be used by the NASD when it calls a trading halt. These procedures would replace the NASD's existing quotation halt procedures.[5]

The proposed trading halt procedures provide that the NASD may call a trading halt pending the dissemination of material news concerning a NASDAQ issue [6] and that the NASD may call a trading halt in the OTC market for a listed security whenever the primary market for that security calls a trading halt to permit dissemination of material news.[7]

The proposed Schedule D procedures provide that NASDAQ issuers should notify the NASD of the dissemination of material news at least simultaneously with notification of the press. After the NASD receives the information, and after consultation with the issuer, the NASD will evaluate the information, and its potential impact on the market, and determine whether a trading halt is appropriate. The NASD then will notify its members of the halt through their NASDAQ terminals' "News" frame. The halt will become effective simultaneously with that notification. Trading in halted securities may resume when the NASD notifies its members on their terminals.

Further, whenever an exchange informs the NASD that it has called a trading halt in one of its listed securities pending dissemination of material news, the procedures provide the NASD the authority to call a simultaneous trading halt in the OTC market for that listed security. Procedures for notifying members of the halt and resumption of trading are identical to the procedures proposed for trading halts in NASDAQ issues.

III. NASD's Views in Support of the Proposal

In its filing, the NASD states that the purpose of the proposed rule change is to: (1) Provide the NASD authority to halt its members' trading in NASDAQ and listed securities pending the dissemination of material news from the issuer; and (2) prohibit trading by NASD members in a security on which a trading halt is in effect. The NASD states that it believes the proposal is consistent with the Act, particularly section 15A(b)(6) of the Act, which provides that the rules of a registered securities association shall be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative practices, and in general, to protect public investors and the public interest.[8] The NASD's proposed trading halt procedures, like its current quote halt procedures, are intended to alert investors that dissemination of material news is imminent and to provide public investors the opportunity to evaluate the information in making investment decisions. The NASD explains that it is seeking trading halt authority because its quote halt procedures have become increasingly ineffective in halting trading and thus ineffective in promoting the investor protection objectives of those procedures.[9]

IV. Comments

The NASD received 18 comments in response to its solicitation of its members and the Commission received one comment in response to its notice of the proposed rule change. With three exceptions, the NASD commentators generally favored the trading halt proposal. Several of the commentators stated that they believe the proposal will benefit shareholders by ensuring equal access to material information and by providing shareholders the opportunity to evaluate it appropriately.[10] One commentator noted that investors may make ill-considered, or at least hurried, decisions on stocks whose issuers disseminate material information while trading is not halted.[11] Several of the commentators, however, raised some questions about the implementation of the NASD proposal. The NASD subsequently addressed those concerns in its filing with the Commission.[12]

The NASD received 18 comment letters from NASDAQ issuers, NASD members and investors. With three exceptions the commentators generally favored the proposal.

[2] Securities Exchange Act Release No. 24176 (March 4, 1987), 52 FR 7718.

[3] *See* letter from Jerry M. Gluck, Senior Vice President and General Counsel, Jefferies & Company, Inc., ("Jefferies") to Jonathan Katz, Secretary, Securities and Exchange Commission, dated April 10, 1987.

[4] The NASD stated that the proposal would not prohibit a member from effecting transactions in a market in which a trading halt is not currently in effect. *See* File No. SR–NASD–87–13, p. 9. In a letter dated May 5, 1988, the NASD reiterated its position that the NASD's authority extends to most securities activities of its member firms but does not extend to transactions executed on an exchange. *See* letter to Richard G. Ketchum, Director, SEC, from Dennis C. Hensley, Vice President and Deputy General Counsel, NASD, dated May 5, 1988.

[5] *See* Schedule D to the NASD By Laws (CCH) ("Schedule D"), p. 1754, "Notification to NASD of News Releases."

[6] The NASD proposes to retain the same guidelines for "material news" that it has applied in its quotation halt procedures. These may include, but are not limited to, the following:

1. A merger, acquisition or joint venture;
2. A stock split or stock dividend;
3. Earnings and dividends of an unusual nature;
4. The acquisition or loss of a significant contract;
5. A significant new product or discovery;
6. A change in control or a significant change in management;
7. A call of securities redemption;
8. The public or private sale of a significant amount of additional securities;
9. The purchase or sale of a significant asset;
10. A significant change in capital investment plans;
11. A significant labor dispute;
12. Establishment of a program to make purchases of the company's own shares;
13. A tender offer for another company's securities, and;
14. An event requiring the filing of a current report under the Securities Exchange Act.

See Schedule D, p. 1754.

[7] Trading halts called pending the dissemination of material news generally are referred to as "regulatory trading halts." The exchanges also may halt trading in listed securities because of order imbalances or operational problems. For example, during the October, 1987 market break the NYSE halted trading in several stocks because of huge order imbalances on October 19 and 20. *See* Division of Market Regulation, *The October 1987 Market Break* 2–13, 2–20 (February, 1988). The NASD is not proposing to extend its trading halt authority, however, to situations in which the primary market calls a non-regulatory trading halt.

[8] The NASD also states in its filing that it believes the proposed rule change is consistent with section 15A(h)(3) of the Act, which provides that a registered securities association may summarily "limit or prohibit any person with respect to access to services offered by the association * * * in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members or the association."

[9] One recent example involved the stock of Federated Department Stores. During an approximately one-hour long quote halt on February 29, 1988, one third-market firm traded 16,000 shares. In another recent example, the NASD reported that on June 25, 1987, 69,500 shares of Canadian Pacific traded during a quote halt that was under one hour in duration.

[10] *See, e.g.*, letter from Michael J. Monahan, Director, Financial Relations, Economics Laboratory, Inc., to James M. Cangiano, Secretary, NASD, dated March 27, 1986.

[11] *See* letter from David A. Lindsey, Senior Vice President, First Indiana Savings Bank, to James M. Cangiano, Secretary, NASD, dated March 20, 1986.

[12] Norwesco, Inc. questioned how the NASD would define what constitutes "material

Continued

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), which submitted a comment generally supporting the proposal,[13] expressed its concern that the proposal will not be sufficient to halt all trading of a listed security when the primary market for the security calls a regulatory trading halt. Merrill Lynch noted that neither the existing exchange trading halt practices, nor the NASD's proposed trading halt authority, would preclude the trading of listed securities on a regional exchange during a trading halt called by the primary market. Merrill Lynch believes that this can be remedied only by a Commission rule prohibiting trading in a security in all markets during a primary market-called trading halt.

Three commentators opposed the amendments. One stated that the proposed amendments would produce "discontinuous pricing" of securities and questioned the NASD's decision to adopt trading halt procedures when the New York Stock Exchange ("NYSE") is considering shortening the length of trading halts.[14] Another commentator opposing the proposal stated that he strongly believes that unless trading in all markets is halted simultaneously, neither trading on the exchanges nor in the OTC market should be halted.[15] Finally, Jefferies submitted comment letters in opposition to the NASD's proposal to the NASD and to the Commission.[16] Jefferies opposes the proposal, claiming that: (1) The NASD lacks the statutory authority to impose trading halts on its members; and (2) trading halts deprive investors of a liquid market and drive trading to markets beyond the scrutiny of regulatory authorities.

First, Jefferies argues that section 15A(b)(6) of the Act does not provide the NASD with adequate authority to impose trading halts on its members because the authority conferred on the NASD under section 15A(b)(6) is circumscribed by section 12(k) of the Act and the Supreme Court's decision in *SEC v. Sloan*, ("Sloan").[17] Section 12(k) sets out the Commission's authority to suspend trading summarily in any security (except exempted securities) for a period not exceeding ten days. Jefferies believes that the proposal would extend to the NASD summary suspension powers greater than those granted the Commission without any limitation on the duration of the halts and without procedural due process protection.[18] Jefferies cites in support of its argument the Supreme Court's decision in *Sloan*, which interpreted the Commission's authority under section 12(k) of the Act. Jefferies asserts that the same due process concerns that compelled the Court in *Sloan* to find that the Commission lacked the authority under section 12(k) to impose consecutive trading suspensions based on the same set of circumstances preclude the Commission's approval of the NASD's proposed trading halt procedures. Jefferies believes that authority to impose a trading halt must be clearly mandated by Congress and that no such clear mandate for the NASD can be found in the Act.

Jefferies further argues that the NASD's authority to impose trading halts also cannot be found under section 15A(h) of the Act, which provides for NASD summary denial of access to its services and review of that denial by the NASD, and by the Commission on its own motion or upon petition by "any person aggrieved by any such summary action."[19] Jefferies argues "that section 15A(h)(3) has nothing to do with trading halts of the type contemplated by the NASD rule and simply is not relevant."[20] Jefferies believes it unlikely that investors and members unable to trade during a halt are included in the class of "aggrieved persons" that may seek redress under that provision.

Finally, Jefferies offers several policy reasons for its opposition to the NASD's trading halt proposal. Jefferies believes that the trading halt proposal would, when implemented, deprive investors of a liquid market in which to trade and is an inappropriate intrusion into the legitimate decision-making process of investors who may appropriately decide to trade on speculation or whatever information is currently publicly available on the security. In addition, Jefferies believes that the NASD's proposal would encourage institutional customers to trade among themselves and would drive trading offshore during a halt, beyond the scrutiny of U.S. self-regulatory organizations and regulatory agencies.

V. Discussion

Currently, the NASD has authority under its rules only to halt quotations in NASDAQ and listed securities traded OTC pending the dissemination of material news by the issuer.[21] The purpose of the NASD's quotation halts is to alert investors to the imminent announcement of material news and to provide investors an opportunity to digest that news and factor it into investment decisions.[22] These are the same reasons that securities exchanges traditionally have halted trading pending the dissemination of material news. The NASD has determined, however, that because halts increasingly have failed to stop trading, they no

information" in deciding whether to halt trading. *See* letter from David H. Baldwin, President, Norwesco, Inc. to James M. Cangiano, Secretary, NASD, dated February 27, 1986. In its filing, the NASD responded that the current "material news" guidelines in Schedule D would continue to apply. (*See, supra* note 5). Abrams Industries, Inc. questioned how an OTC trading halt could be enforced and what sanctions the NASD could impose for violations of the prohbitions. *See* letter from I.B. Schoenberg, Vice President, Corporate Development, Abrams Industries, Inc. to James M. Cangiano, Secretary, NASD, dated March 7, 1986. The NASD responded that members' compliance would be determined through inspection of firm books and records. (The Commisison also believes that the NASD has the authority to take action against a member for books and records violations and for violations of the trading halt provisions.) Mayer & Schweitzer, Inc., an OTC market-maker in approximately 2,500 securities, cautioned against extending the NASD's trading halt authority on listed securities to situations in which the primary market for the security calls a trading halt for non-regulatory reasons. *See* letter from Leonard Mayer, Vice President, Mayer & Schweitzer, Inc. to James M. Cangiano, Secretary, NASD, dated March 20, 1986. Finally, First Tennessee National Corporation ("First Tennessee") agreed with the proposal but stressed the importance of the NASD consulting with the issuer prior to any action under the trading halt procedures. First Tennessee believes that without consultation, the NASD cannot effectively evaluate material information. *See* letter from Sarah L. Meyerrose, Vice President and Treasurer, First Tennessee Corporation, to James M. Cangiano, Secretary, NASD, dated March 24, 1986.

[13] *See* letter from John B. Manning, Vice President, Equity Trading Division Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc. to James M. Cangiano, Secretary, NASD, dated April 8, 1986 ("Merrill Lynch letter").

[14] *See* letter from Charles Berk to James M. Cangiano, Secretary, NASD, dated March 4, 1986. The NYSE's policy is normally to reopen trading within 30 minutes after the halt was implemented if the news announcement has not been made. Recommencement of trading under these circumstances is preceded by an announcement that trading is resuming even though the material news announcement has not been released. *See* NYSE Listed Company Manual, p 202.07.

[15] *See* letter from Robert A. Podesta to James M. Cangiano, Secretary, NASD, dated February 28, 1986.

[16] *See* Letter from Jerry M. Gluck, Senior Vice President and Counsel, Jefferies, to Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated December 17, 1986 ("Jefferies December letter"); and letter from Jerry M. Gluck, Senior vice President and General Counsel, Jefferies, to Jonathan G. Katz, Secretary, SEC, dated April 10, 1987 ("Jefferies April letter").

[17] 436 U.S. 103 (1978).

[18] Jefferies maintains that because all registered broker-dealers are required to be members of the NASD, the NASD's trading halt proposal would have the same impact on NASD members as a Section 12(k) trading suspension or a section 12(j) deregistration. *See* Jefferies December letter, *supra* note 13 at 2.

[19] *See* Jefferies April Letter, *supra* note 13.

[20] *See id.*, p. 2.

[21] *See* Schedule D, Notification to NASD of News Releases.

[22] *See, e.g.*, NASD Notice to Members, 86-63, December 1, 1986.

longer provide investors an adequate opportunity to assess the import of the news disseminated by the issuer.[23] As a result, the NASD is concerned that its quotation halt mechanism is failing to provide adequate public protection. The NASD is seeking, therefore, the authority to halt trading under the same circumstances it previously halted quotations to assure that there will be a hiatus in trading to permit investors to be alerted to and assess the importance of material news. In filing this proposal, the NASD is requesting the same authority that the exchanges traditionally have exercised to halt trading in their markets pending dissemination of material news by an issuer.[24] Thus, this proposal would enable the NASD to provide the same protections to customers of its member firms that now are afforded to customers of exchange member firms.

1. Authority

The Commission believes that the NASD has ample authority under section 15A(b)(6) of the Act, which provides that the NASD's rules must be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * and to protect investors and the public interest," to halt trading to provide an opportunity for all investors to evaluate the material news in making investment decisions. As several of the NASD commentators noted, the NASD's trading halts proposal would protect investors by providing opportunities for the adequate disclosure of material news and by eliminating the potential of public customers trading without awareness that there is material news regarding the issue pending. The proposal, therefore, should result in increased orderliness and integrity for the over-the-counter market.

The Commission also believes the proposal is consistent with the Act because it would extend to customers of NASD member firms the same protections offered to customers of members of exchanges, which traditionally impose trading halts to permit the orderly dissemination of material news. Moreover, the Commission believes the exchanges' authority to initiate trading halts is derived from statutory language in section 6(b)(5) [25] that is identical to the relevant portions of section 15A(b)(6).[26]

The Commission does not believe that the NASD's authority to impose trading halts under section 15A(b)(6) of the Act is circumscribed in any way by the Commission's summary suspension authority in section 12(k) of the Act; nor does the Commission believe that the *Sloan* decision is dispositive of the issues presented by this proposed rule change. Section 12(k) of the Act authorizes the Commission to suspend trading summarily in any security (except an exempted security) for up to 10 days if required by the public interest or the protection of investors and makes it unlawful for any exchange member or broker-dealer to trade in a security subject to a suspension. Section 12(k) does not contain any limitation whatsoever on the ability of self-regulatory organizations to regulate effectively their marketplaces. In *Sloan* the Supreme Court found that section 12(k) did not empower the Commission to impose consecutive 10-day trading suspensions on a security based on the same set of circumstances.[27] Contrary to Jefferies' broad reading of the decision, the Commission believes that the *Sloan* Court's holding is limited to prohibiting the Commission from reading section 12(k)'s silence on repeated summary suspensions to affimatively permit them.[28] The Commission also believes that the trading halts proposed in the NASD's filing are materially different in purpose and duration from summary suspensions imposed by the Commission pursuant to section 12(k). While the proposed trading halt authority is intended to permit the NASD to halt trading for material news dissemination for a relatively brief period, the Commission halts trading pursuant to its section 12(k) authority for up to 10 days to stem manipulative and fradulent activity.

The Commission further disagrees with Jefferies that the NASD's proposal is fatally flawed because it lacks an adequate limitation on the NASD's authority. The NASD's proposal provides that trading halts may be imposed only under certain specific circumstances: specifically, when a NASDAQ issuer has material news to disseminate or when the primary exhange market for a listed security halts trading in a security to allow for news dissemination.[29] Moreover, the procedures provide that, after the NASD receives notification that the issuer soon will issue a material news release, the NASD will consult with the issuer on the potential impact on the market to determine whether a trading halt is appropriate. Once the pending material news has been disseminated, or once the primary market for the security ends its trading halt, the NASD also will end its halt.[30] This is consistent with the

[23] *See supra*, note 8.

[24] *See e.g.*, NYSE Listed Company Manual, p 202.07, Trading Halt Procedures.

[25] For example, in 1985, the Commission approved a New York Stock Exchange ("NYSE") proposed rule change under section 6(b)(5) that provided that the NYSE generally would re-open trading after 30 minutes if no news announcement was forthcoming. *See* Securities Exchange Act Release No. 22697 (December 10, 1985), 34 S.E.C. Doc. 1222.

[26] The exchanges have exercised the authority to halt trading in their markets since before Congress enacted the Securities Exchange Act of 1934. Further, the exchanges continuously and notoriously have exercised this authority, even during periods that Congress substantially amended the Act. Thus, by not prohibiting the exchanges from using the authority in Section 6 to halt trading, Congress acquiesced in the exchanges' interpretations that that Section provided an adequate source of authority for trading halts. Sutherland Stat. Const. Section 49.09 (4th Ed.). *See also* Merrill Lynch, Pierce, Fenner & Smith v. Curran, 456 U.S. 1825, 1839 (1982).

It is clear that Congress' long-standing objective has been to ensure that the exchanges and the NASD have equivalent authority to regulate their respective markets. For example, when Congress passed the Maloney Act and added section 15A in 1938, it included a requirement that national associations authorized under the new Section have rules designed, among other things, to promote just and equitable principles of trade. That same standard applied to exchange rules under section 6. *See* S. Rep No. 94–75, 94th Cong., 1st Sess. 27, *reprinted in* 1975 U.S. Code Cong. and Ad. News 205. Again, in 1975 Congress considered the appropriate scope of self-regulatory organization rules and amended Sections 6 and 15A to give exchanges and national securities associations greatly similar regulatory mandates. *See generally* 1975 U.S. Code Cong. and Ad. News 205, 206. Thus, the Commission believes that section 15A(b)(6), like section 6(b)(5), provides ample authority for the NASD's proposal.

[27] 436 U.S. at 103.

[28] The Commission disagrees with Jefferies that the decision requires explicit statutory language to confer *any* summary suspension authority. Jefferies points to dictum in the opinion that "summary suspension is an awesome power with a potentially devastating impact * * * [and requires a] clear mandate from Congress * * * further to confer that authority." 436 U.S. 15 112. The Commission first notes that this is dictum and not controlling of the issue here. Furthermore, the Commission believes this quotation must be read in light of the issue before the Court: whether the clear language of 12(k) authorizing a single 10-day summary suspension could be interpreted broadly to authorize repeated summary suspensions, based on the same set of circumstances. The Court concluded that the Commission could not "interpret away" a clear limitation on its authority to exercise such a drastic remedy as its summary suspension authority.

[29] As noted above, the NASD will continue to define "material news" by the same standards it now uses to determine whether a quote halt is appropriate. *See supra*, note 5.

[30] The NASD stated that trading halts in NASDAQ securities generally will be lifted after 30 minutes even if no news has been disseminated; the

Continued

NASD's practice when it has called quotation halts. Thus, NASD trading halts for both NASDAQ and listed securities likely will be of short duration.

Further, even though NASD trading halts generally will be of short duration and imposed only after consultation with the issuer or after the primary market has halted trading in a similar manner, NASD rules provide for review procedures for any person aggrieved by "the operations of the NASDAQ System." Thus, someone aggrieved by an NASD-called trading halt should be able to seek review of an NASD trading halt under the NASD's Code of Procedure.[31]

2. Effect on Trading

The Commission recognizes that the NASD's proposal raises the concern of increased trading, particularly in listed securities, during NASD trading halts in markets that may be beyond the scrutiny of U.S. regulatory agencies and self-regulatory organizations; for example, foreign markets. The Commission believes, nonetheless, that, if any off-shore trading were to occur, it will be primarily that of sophisticated institutional investors that have made the determination to trade on all available information and without the protections afforded by the U.S. regulatory system. Further, in light of the benefits NASD trading halts may provide less sophisticated investors, the Commission does not believe that the risk that some sophisticated investors may opt to trade in foreign markets compels the conclusion that the NASD proposal is inconsistent with the Act.

VI. Conclusion

The Commission believes the NASD's proposed rule change is consistent with the Act, particularly section 15A(b)(6). The proposal provides the NASD with the authority to provide an effective hiatus in trading to permit investors to evaluate material news and make an informed trading decision. The proposal further would extend to the NASD the same power the exchanges traditionally have exercised to ensure fair and orderly markets and would extend to public customers of NASD member firms the same protections that are available to exchange member firm customers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–NASD–87–13 be, and hereby is, approved.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

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same policy currently applies to NASD quotation halts. As noted above, the NASD will, as a general rule, reinstitute trading in exchange-listed securities no later than simultaneously with the primary exchange market for the securities. Because of stiff competition for order flow, the tendency recently among the exchanges has been to halt trading in listed securities for shorter and shorter periods. *See, e.g.*, NYSE Listed Company Manual p. 202.07, which sets out the NYSE's policy to reopen trading if no news has been disseminated within 30 minutes. The Commission notes that it has announced its willingness to grant unlisted trading privileges on NASDAQ/NMS securities, subject to certain conditions. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640. Accordingly, market competition should have the same disciplining effect on the NASD in its exercise of its trading halt authority and should serve to compel the NASD to call trading halts judiciously and to end halts as quickly as possible.

[31] Those procedures specify that review may be had before a hearing panel designated by the NASD Board of Governors, with a right of appeal to the NASD Board of Governors. *See* NASD Code of Procedure, Article IX, Section 1.

[Release No. 34–25667; File No. SR–NYSE–88–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc.

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 April 19, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 460.20 to make permanent the deletion of restrictions that had prohibited an approved person of a specialist member organization that is entitled to the exemptions from Rule 460(a) and Rule 460.10 provided by Rule 98 from acting as a managing underwriter for a distribution of (i) any security in which an associated specialist is registered; (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to make permanent the deletion of restrictions in Exchange Rule 460.20 which had prohibited an approved person of a specialist member organization entitled to the exemptions from Rule 460(a) and Rule 460.10 provided by Rule 98 from acting as a managing underwriter for a distribution of (i) any security in which an associated specialist is registered; (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered.

In SR–NYSE–85–25, the Exchange submitted for Commission approval new Rule 98 and implementing Guidelines which provided, essentially, that an approved person of a specialist member organization which established a formal organizational separation between itself and the associated specialist member organization, adopted internal controls, and otherwise conducted its operations in conformity with the Guidelines would be entitled to an exemption from the restrictions in Rules 104, 104.13, and 105, and would be entitled to an exemption from Rules 113.20 and 460 to the extent indicated in those Rules.

As submitted by the Exchange, and as approved by the Commission, Rule 460.20 permits an approved person, who is entitled to the exemptions provided by Rule 98, to act as a member of an underwriting syndicate or selling group,

but not as a managing underwriter, for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered. (This restriction is hereinafter referred to as the "managing underwriter restriction".) When the approved person is acting as a syndicate or selling group member as permitted, the associated specialist member organization must "give up the book" to another specialist member organization, which is to act as a full-time relief specialist for the period during which SEC Rule 10b–6 of the Act is applicable to the regular specialist member organization. The full-time relief specialist member organization trades for its own account, not for the account of the regular specialist member organization, in meeting marketmaking responsibilities under Exchange rules during the applicable Rule 10b–6 period. The approved person may act as an underwriter, in any capacity, for a distribution of nonconvertible debt securities of an issuer in whose securities an associated specialist is registered, and the specialist member organization is not required to "give up the book" in such instances. In SR–NYSE–85–25 (at page 11), the Exchange expressed its view at that time that any possible public perception of a potential conflict of interest between an approved person, acting as underwriter, and its associated specialist member organization, acting as marketmaker, was likely to focus most particularly on instances where the approved person was acting as a managing underwriter, and thus has a greater financial stake in the successful outcome of the distribution than other syndicate or selling group members. Thus, to minimize any possible concerns that might arise in this area, the Exchange proposed at that time the managing underwriter restriction.

In Securities Exchange Act Release No. 23768 (November 3, 1986) approving the Exchange's Rule 98 exemptive program, the Commission noted that it was required "to balance the potential reduced risks of abuse resulting from the managing underwriter prohibition against the argument by integrated broker-dealers that the prohibition imposes an unnecessary competitive burden on their ability to enter the specialist business." The Commission concluded that the managing underwriter restriction was not "strictly necessary" under the Securities Exchange Act, but stated that "[T]he Act allows an SRO sufficient flexibility to proceed cautiously in implementing potentially significant structural changes in the marketplace." In the same Release, the Commission approved a proposal by the American Stock Exchange to provide exemptive relief comparable to the NYSE's Rule 98 proposal, but which did not contain any managing underwriter restriction.

In light of the highly volatile nature of the markets in October 1987, the Exchange questioned at that time whether it was appropriate to maintain the managing underwriter restriction. For the date of the Commission's approval of Rule 98 in November 1986 until October 1987, little interest has been shown in the rule as it was originally written.

It appeared that the managing underwriter restriction may have acted as a significant barrier to the entry of diversified broker-dealers to the specialist business on this Exchange, with the result that the Exchange market may have been denied the benefits which the Exchange sought to achieve by virtue of the Rule 98 proposal. In SR–NYSE–85–25, the Exchange noted that the Rule 98 proposal was intended to help strengthen the capital base of the auction market system. The Exchange pointed out that large diversified organizations have the capital to expand their business, and that if such organizations were to enter the specialist business, they could reasonably be expected to provide additional capital for marketmaking on the Exchange.

The Exchange also noted in SR–NYSE–85–25 (from the perspective of the marketplace of 1985), that the increasing "institutionalization" of the market and the increasing volatility of trading, would require specialists to commit greater capital, and be willing to assume some additional market risk in accommodating large-size orders and minimizing short-term price fluctuations, in the future. The Exchange observed in that filing that the specialist system would benefit significantly from the additional capital contributions of large diversified organizations which have the financial resources to devote to specializing and, because of their diversified nature, may have a greater ability to assume risk than an organization whose business consists exclusively of specializing.

On October 22, 1987, the Exchange's Board of Directors approved an amendment to Rule 460.20 to delete the managing underwriter restriction temporarily for a six-month period ending May 1, 1988. The Commission approved this rule change on an accelerated basis.[1]

Following this action by the Exchange's Board of Directors and the Commission, two major diversified firms, Merrill Lynch, Pierce, Fenner & Smith and Drexel Burnham Lambert sought and obtained Rule 98 exemptive relief and are now associated with specialist member organizations. In addition, two diversified firms that had already been in the specialist business on the Exchange (and were subject to specialist regulations in their other business lines), Bear, Stearne & Co. and Smith New Court, restructured their operations and sought and obtained exemptive relief under Rule 98.

It thus appears appropriate to the Exchange at this time to make permanent the elimination of the managing underwriter restriction. In addition, the Exchange requests that the Commission extend, on an accelerated basis, the temporary deletion of the managing underwriter restriction until such time as the Commission makes a decision regarding approval of this proposal on a permanent basis.

(2) *Basis Under the Act for Proposed Rule Change.* Since, as noted above, the entry into the specialist business of diversified organizations is expected to have beneficial effects on the overall Exchange market, the proposed rule change can be said to promote the purposes of section 6(b)(5) of the Act in that it "remove[s] impediments to and perfect[s] the mechanism of a free and open market * * * and, in general, protect[s] investors and the public interest."

By permitting diversified member organizations to enter a business as to which they may currently be effectively excluded by regulation, the proposed rule change promotes the purposes of section 6(b)(5) in that it is "not designated to permit unfair discrimination between * * * brokers or dealers * * * " In this regard as well, the proposed rule change promotes the purposes of section 6(b)(8) in that it removes a "burden on competition" as to specializing on the Exchange not necessary to further the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in

[1] SR–NYSE–87–37, Release No. 25055, 52 FR 41520 (October 28, 1987). No comments were received by the Commission regarding this accelerated approval.

furtherance of the purposes of the Act. In fact, as discussed above, by facilitating the entry into the specialist business of diversified organizations, the proposed rule change can be said to enhance competition in marketmaking on the Exchange.

C. Self-Regulatory Organziation's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission has determined that it is appropriate to grant accelerated approval to the Exchange's request that the Commission extend the effectiveness of the deletion of the managing underwriter restriction temporarily. As noted above, the Comission previously had approved, for a six-month period ending May 1, 1988, the deletion from Rule 460.20 of the managing underwriter restriction. Since that time the Comission has not received any negative comments on the proposal, and the removal of the restriction has facilitated the affiliation of specialist units with integrated firms. The Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after date of publication of notice of filing thereof in that this will extend the temporary deletion of the managing underwriter restrication until such time as the Commission makes a decision regarding permanent approval of this proposal.

The date of effectiveness and timing of Commission action, with respect to permanent delection of the managing underwriter restriction shall be within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Soliciation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, partially approved, nunc pro tunc as of May 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88-10558; Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25666; File No. SR-PSE-88-4]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.; Increased Margin Requirements for Equity and Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on May 2, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule XI, sections 2(d)(2)(D)(i) and 2(d)(2)(F)(1), and Rule XXI, sections 16(b) (i) and (ii) and 16(c)(2), to raise the initial and maintenance margin requirements applicable to equity and index option contracts, and to increase the minimum margin for a straddle/combination position.

(Brackets indicate language to be deleted, italics indicate new language.)

Rule XI

Margins

Other Provisions

Sec. 2(d).

(1) No change.

(2) (A) (B) (C) No change.

(D) The margin on any put or call issued, guaranteed or carried "short" in a customer's account shall be:

(i) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation, 100% of the current market value of the underlying security or index specified in column II of this subsection (D)(i) below.

Notwithstanding the margin required below, the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money amount" (as defined in this subparagraph (D)(i) below), but shall not be less than 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column III of this subsection D(i) below.

Security or index	Initial and/or maintenance margin required (percent)	Minimum margin required (percent)	Underlying component value
I	II	III	IV
(1) Stock	[15]*20*	[5]*10*	The equivalent number of shares at current market prices.
(2) Industry index stock group	[15]*20*	[5]*10*	The product of the current index group value and the applicable index multiplier.
(3) Broad index stock group	[10]*15*	[5]*10*	Do.
(4) U.S. Treasury bills—95 days or less to maturity	.35	1/20	The underlying principal amount.
(5) U.S. Treasury notes	3	1/2	Do.
(6) U.S. Treasury bonds	3.5	1/2	Do.
(7) Foreign currencies	2	1/2	The product of units per foreign currency contract and the closing spot price.

For the purposes of this subsection (D)(i), "out-of-the-money amounts" are determined as follows:

No change.

(ii) through Section (E). No change.

(F)(1) If both a put and call specifying the same number of shares of the same underlying security, the same principal amount of the same United States Government obligation or the same index multiplier for the same index stock group are issued, gruaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, as required pursuant to (D)(i) above, [plus any unrealized loss on] *plus 100% of the current market value of* the other option. The minimum margin requirement, however, shall not apply to the other option.

(F)(2) through Section 3. No change.

Rule XXI

Index Options

Margins

Sec. 16(a) No change.

(b) The margin requirements shall be as follows:

(i) For option contracts on a broad based index: For each put or call option contract on a broad based index carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [10]*15%* of the index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the index value as multiplied by the index multiplier in the case of a call, or any excess of the index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5]*10%* of the index value times the index multiplier.

(ii) For all other index option contracts: For each put or call index option contract carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [15] *20%* of the product of the current index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current index value as multiplied by the index multiplier in the case of a call, or any excess of the current index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5] *10%* of the current index value times the index multiplier.

(c) through (c)(1)(B). No change.

(c)(2) Short put and short call. The subparagraph (c)(2) applies to accounts carrying positions in short put index options which are offset by positions in short call index options for the same underlying index with the same index multiplier. The margin required for such a position shall be the margin required for the short put option contract or the margin required for the short call option contract (pursuant to paragraph (b) of this Rule), whichever is greater, as determined by (b) above, [increased by the amount of any unrealized loss on] *plus 100% of the current market value of* the other option contract.

(d) through Sec. 17. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the purposed rule change is to increase the initial and maintenance margin requirements applicable to index and equity options, as well as increase the minimum margin for the straddle/combination position.

The increased margin requirements cover 95% of all historical seven business day percentage price moves during a six month review period. Previously, a twelve-month review period was used; however, the shorter review period reflects the substantial rise in market volatility stemming from the October 1987 market break. As a result of this six month review, the new initial and maintenance margin requirements are to be raised to 20% for equity and narrow based stock indexes and 15% for broad based stock indexes. The minimum margin requirement for all three will be 10%. Margin calculations will continue to utilize the premium plus methodology, as will the straddle/combination position margin calculations.

The increased margin requirements would be in effect for a period not to exceed six months commencing on the date margin increases become effective for positions established on or after that date. The PSE in conjunction with the other SROs will coordinate the commencement of the six month period as well as formal review of margin adequacy. Upon the completion of the six month period, the new margin requirements would revert to their previous levels unless other percentages would more accurately address the market volatility.

The Exchange believes that the proposed rule change is consistent with

section 6(b)(5) of the Securities Exchange Act of 1934, in that the proposed rule change is intended to increase initial and maintenance index and equity option margins to a level where both firms and investors are assured of reasonable financial protection from uncharted levels of volatility.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 1, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10455 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25665; File No. Phlx-88-8]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Elimination of Odd-lot Differentials

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted, on March 7, 1988, copies of a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to eliminate the differential charged on the execution of odd-lot and partial round lot [3] market and limit orders. The proposal also details the pricing procedure for the odd-lot portion of partial round lot orders and clarifies how odd-lot orders are executed through the Phlx Automated Communication and Execution ("PACE") System.

Notice of the proposed rule change, together with its terms of substance, was given by the issuance of a Commission release (Securities Exchange Act Release No. 25473, March 16, 1988) and by publication in the **Federal Register** (53 FR 9397), March 22, 1988). No comments were received regarding the proposal.

The proposal explains the pricing of a variety of odd-lot orders, which, in most cases, includes the elimination of the odd-lot differential.[4] Proposed Rule 227(a)(i) provides that pre-opening odd-lot and PRL market orders will receive an execution at the opening price on the primary market, without a differential, and pre-opening limit orders will receive an execution at the limit price following a sale on the primary market through the limit price, also without a differential. The pricing of post-opening market and limit orders is substantially similar to the pre-opening pricing structure. Odd-lot market orders and PRL market orders of fewer than 600 shares will receive an execution at the PACE quote [5] and limit orders of fewer than 600 shares will receive an execution at the limit price following a trade through the limit price on the primary market. Again, neither of these orders will be charged a differential. The odd-lot portions of PRL market and limit orders in excess of 600 shares, whether or not they are routed through PACE, will receive the same execution price as the round lot, with the round lot price determined by the regular auction market process. Further, if the round lot portion of the PRL receives an execution at more than one price, the odd-lot portion will receive the same price as the last portion of the round lot. Finally, odd-lot stop orders will get an execution at the PACE quote; however, odd-lot stop limit orders will continue to be executed with a differential.[6]

The Commission believes that the proposal is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and specifically sections 6(b)(5) and 11A(a)(1)(C)(i) of the Act in that the amendments will add to the maintenance of a free and open market and will provide for more economically efficient executions of securities transactions. Specifically, the Commission finds that the proposed amendments to Phlx Rules 227 and 229 will simplify the pricing and execution of odd-lot orders, and that the elimination of the differential on most transactions will result in the execution of customer orders at prices more representative of market interests, and with lower transaction costs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

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[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b-4 (1986).

[3] A partial round lot ("PRL") is an order in excess of a single round lot unit (usually 100 shares) that is not an even round lot.

[4] The differential is the charge, usually ⅛ of a point, imposed on a customer odd-lot order. If, for example, a customer placed an odd-lot market order to buy a stock quoted at 20 by 20¼, the execution would occur at 20⅜ (the 20¼ sell quote plus the ⅛ differential) if the market traditionally charged a differential on such orders.

[5] *See* Phlx Rule 229. The PACE quote is defined as "the best bid/ask quote among the American, Boston, Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchanges,, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate." Under the PACE Rules, market orders up to 599 shares are guaranteed an execution at the PACE quote. Orders from 600 shares to 1,099 shares may be routed to the appropriate specialist through PACE, but do not receive the execution guarantee.

[6] According to the Phlx, the differential was retained for this one type of transaction because of the extra handling and increased risk to the specialist involved in processing stop limit orders.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: May 5, 1988.

[FR Doc. 88-10559 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25644; File No. SR-PHLX-88-06]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc. Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on February 5, 1988, a proposed rule change to amend its position limit rule with regard to the Value Line Composite Index option contracts and the National Over-the-Counter Index option contracts.

The proposed rule change was published for comment in Securities Act Release No. 34-25397 (February 25, 1988), 53 FR 6903. No comments were received on the proposed rule change.

The Exchange proposes to establish a position limit of 25,000 option contracts on the same side of the market for the Value Line Composite Index ("Value Line Index") contracts,[3] with no more than 15,000 contracts in the nearest expiration month. For purposes of this rule, the PHLX shall aggregate positions in the American style option ("XVL") contracts and the European style option ("VLE") contracts on the Value Line Index.[4] The Exchange also proposes to establish a maximum position limit of 10,000 option contracts on he same side of the market for the National Over-the-Counter Index option contracts ("XOC").

Under existing Exchange rules, position limits for the XVL and XOC contracts are determined by the monetary value of the overall position,[5] rather than a specified number of contracts. Currently, both the XVL and the XOC have a $300 million position limit. Because the position limits are keyed to a specific dollar value, the number of contracts that can be held without violating the position limit varies with the price moves of the particular index. For example, when XVL trading first commenced in January 1985, the maximum XVL position limit was approximately 15,500 contracts.[6] Before the large market decline in October 1987, however, the number of contracts that equalled the XVL position limit had been reduced by approximately 32%, to 10,500 contracts, because of the higher Index value. The current index value of 230.08 would permit a maximum XVL position of 13,038 contracts. Similarly, the number of XOC contracts that would equate to the position limit has varied. Based on an April 27, 1988 index level of 247.10, the maximum number of XOC contracts permissible was 12,140, a decrease of approximately 30% from the maximum position limit of contracts in May 1985 when the XOC began trading.

The Exchange notes that because current PHLX index option position and exercise limits are expressed in terms of dollar equivalents rather than number of contracts, the maximum number of contracts allowed has declined and constantly is moving. The Exchange seeks to address this phenomenon by converting to a specified number of option contracts rather than a specified dollar value. This conversion will relieve market participants of having to calculate the value of their position constantly to determine compliance with the position limits.

The Exchange notes that the proposed limits result in an increase in permissible position limits for options on only the Value Line index contracts. The Exchange is seeking to increase the Value Line position limit to a level that is comparable to those the Commission has approved for other broad-based index options in order to remain competitive with other index option markets and to coincide with the introduction of European style options. Last year the Commission approved increases in position limits for the Chicago Board Options Exchange's S&P 100 and 500 Index options and the American Stock Exchange ("Amex") Institutional Index option to 25,000 contracts, with no more than 15,000 contracts in the nearest expiration and the Amex's Major Market Index option to 17,000 contracts, with no more than 10,000 contracts in the nearest expiration.[7]

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.[8] The Commission believes that, besides the advantage of clarity, establishing limits based on a maximum number of option contracts avoids the potential problem of a market participant being forced to reduce the number of contracts held because of increases in the index value. The Commission believes the fluctuating limitation on the number of allowable contracts is an unnecessary trading and hedging complication. The Commission also notes that the Exchange has placed a restriction of no more than 15,000 XVL and VLE contracts combined can be in the nearest expiration month, where historically most of the trading occurs.

Additionally, the Commission notes that the proposed position limits are comparable to those approved by the Commission for other broad-based index options such as Standard & Poor's 100 and 500 Index options, the Major Market Index option, and the Institutional Index option.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

Dated: May 3, 1988.

[FR Doc. 88-10456 Filed 5-10-88; 8:45 am]

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[Release No. 34-25647; File No. PHLX-87-38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] The XVL Index has traded on the Exchange since January 11, 1985.

[4] An American style option may be exercised by its holder anytime before expiration. A European option, however, can be exercised only on the last trading day prior to its expiration. Although the Commission has approved the VLE for trading, at the present time the Phlx trades only American style XVL options. *See* Securities Exchange Act Release No. 24508 (May 23, 1987), 52 FR 20858.

[5] The overall position's value is determined by taking the closing index value and multiplying that value by the index multiplier (100 for both the XVL and XOC) and then multiplying that product by the number of contracts on the same side of the market.

[6] The XVL Index has traded on the Exchange since January 11, 1985.

[7] *See* Securities Exchange Act Release No. 24,556 (June 5, 1987) 52 FR 22695.

[8] 15 U.S.C. 78f (1982).

[9] 15 U.S.C. 78s(b) (1982).

[10] 17 CFR 200.30-3(a)(12) (1986).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (19j87).

the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on December 24, 1987, a proposed rule change to provide guidance to the PHLX Allocation, Evaluation and Securities Committee in allocating securities in new trading segments and additional types of options.

The proposed rule change was published for comment in Securities Exchange Act Release No. 25336 (February 10, 1988), 53 FR 5068. No comments were received on the proposed rule change.

The proposed rule by the Exchange would establish a general policy of according existing specialist units an automatic right to trading privileges in securities for which they are the appointed specialist in any extended trading segment touching and contiguous to existing trading sessions.[3] In addition, the policy grants allocation priority to existing specialists in the securities for which they are appointed as specialists for any non-contiguous trading segment or if additional option types are listed for allocation.[4]

The Exchange believes this policy reflects the close nexus between European and American style option contracts on the same underlying instrument and the preference for continuity in the marketplace with the existing day specialist being the specialist in any extended or evening trading session.

The Exchange further believes the policy provides flexibility for those existing specialists who cannot or do not wish to take on added specialist responsibilities for additional time periods or additional option types. The rule change would also provide the Allocation, Evaluation and Securities Committee with flexibility to ensure that allocations continue to be in the best interest of the Exchange while preserving existing specialists' interests that a valuable privilege is not deprived them without a full and fair written record of why such action was taken.[5]

[3] At the present time on the PHLX there are no trading segments that are touching and contiguous to existing trading segments. Such segments would arise if current trading segments were extended.

[4] The PHLX's establishment of an evening trading session for foreign currency options is an example of a non-contiguous trading segment. Creation of a European style option, which can be exercised only on the trading day immediately preceding the option's expiration, for an existing option that trades only American style is an example of a new option type.

[5] If an existing specialist or other party is aggrieved by a Committee allocation decision, it can appeal that decision to the PHLX Board. *See* PHLX By-Law Section 11-1.

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.[6] More specifically, the Commission believes it is logical for the Exchange to establish a policy that fosters continuity in the market making of the same options in additional trading sessions or practically identical options in the same trading session. According existing specialists an automatic right to trading privileges in products they currently trade for any extended trading session touching and contiguous to existing trading segments and priority for trading in their appointed securities in additional non-contiguous trading sessions, as well as for additional types of options for which they are the appointed specialist, will ensure continuity of the limit order book between trading segments and reduce investor confusion. In this regard, the Commission notes that many of the same investors can be expected to trade both European and American style options or the same security in additional trading sessions. Where the same specialist is handling the option or other security, investor confusion as to what entity or specialist has an order and whether the order will be filled if the option or other security trades at the designated limit in one trading session but not the other will be minimal.

The Commission also believes that the privileges and rights established by the proposed rule change will contribute to the maintenance of fair and orderly markets. Specialist market making may be enhanced by the ability to trade as a dealer in a particular option in all of the trading sessions. This ability would reduce the specialist's risk of establishing positions because the specialist would have access to the limit order book and could trade as a dealer on a continuous basis throughout the entire trading day. Moreover, under the proposed rule change, existing specialists will not be forced to assume the additional responsibility of trading in a contiguous or non-contiguous session if they so choose.

Finally, the commission notes that the PHLX will retain its ability to designate another entity as the specialist in any additional trading sessions where the Exchange believes such action is appropriate, provided the aggrieved specialist who applied for the appointment is notified in writing of the decision and provided a basis for that decision. In addition, any aggrieved specialist can appeal an adverse Allocation, Evaluation and Securities Committee's decision to the Exchange's Board of Governors.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: May 3, 1988.

[FR Doc. 88-10457 Filed 5-10-88; 8:45 am]

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[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b) (1982).

[8] 17 CFR 200.30-3(a)(12) (1986).

[Rel. No. IC-16390; 812-6817]

Fidelity Capital Trust et al.; Notice of Application

May 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Fidelity Capital Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Growth Company Fund; Fidelity High Income Fund; Fidelity Income Fund; Fidelity Intermediate Bond Fund; Fidelity Puritan Trust; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Trend Fund; Income Portfolios (collectively, "Funds"); and Fidelity Brokerage Services, Inc. ("FBS") (FBS and Funds collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under Sections 6(c), 17(b) and 17(d) of the 1940 Act and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order to permit the Funds to lend their portfolio securities to FBS.

Filing Date: The application was filed on August 7, 1987 and amended on March 3, 1988 and April 18, 1988.

Hearing or Notificaton of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 30, 1988. Request a hearing in

writing, giving the nature of your interest, the reason for the request, and writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

1. Each of the Funds is registered under the 1940 Act as an open-end management investment company, and is a member of an investment company complex ("Fidelity Funds"). The investment adviser and principal underwriter of each Fund are Fidelity Management & Research Company ("FMR") and Fidelity Distributors, Inc., respectively. FBS is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc.

2. FBS and FMR are wholly-owned subsidiaries of FMR Corp., and may be deemed to be persons under common control and thus affiliated persons of one another. Since FMR is an affiliated person of each Fund as investment adviser to each Fund, FBS may be deemed to be an affiliated person of an affiliated person of each Fund. As such, FBS may be deemed to be prohibited by the provisions of section 17(a)(3) of the 1940 Act from borrowing from the Fund, and by the provisions of section 17(d) of the 1940 Act and Rule 17d-1 thereunder, from participating in any joint enterprise with the Funds, such that the Funds may be prohibited by such provisions from lending portfolio securities to FBS.

3. The Funds currently lend securities to only six broker-dealers and one institutional investor ("Institutional Investor" pursuant to procedures adopted by each Fund's board of trustees. The term Institutional Investor includes only such universities, banks, thrift institutions, pension funds, employee benefit plans and other institutions with knowledge and experience in financial and business matters such that they are capable of evaluating the risks involved in borrowing securities from the Funds. The Funds believe that their portfolio securities lending programs provide a useful means to increase income at minimal risk, and that the benefits to shareholders resulting from the Funds' securities lending programs can be increased to the extent each Fund may engage in loan transactions with FBS. Each Fund proposes to amend and/or supplement its existing procedures as necessary to conform them with the procedures set forth in the application ("Procedures"), which are designed to ensure that any borrower, whether or not affiliated with a Fund, that participates in a portfolio securities lending program with a Fund will do so in accordance with the policy and provisions of the 1940 Act and on a basic which is fair to the Fund and its shareholders. Applicants request that this exemptive relief be extended to other registered investment companies for which FMR serves as investment adviser which have not established securities lending programs, and to registered investment companies which in the future may be created for which FMR will serve as investment adviser, provided: (1) the boards of trustees of such companies including a majority of the disinterested trustees, adopt portfolio securities lending programs, and (2) the procedures and conditions governing such programs are substantially identical to the Procedures and conditions applicable to the Funds.

4. The Funds will lend portfolio securities in accordance with their amended and/or supplemented procedures to borrowers, including FBS, on the same basis as they currently lend securities to unaffiliated borrowers. Under their current lending program, a schedule of rates ("Schedule of Rates") based on loan market values is established by FMR and applied uniformly. The Schedule of Rates, set forth in the application, establishes fair minimum annualized returns to the Funds, based upon FMR's assessment of market conditions and profitability experience, taking into account supply and demand considerations relative to the securities of issuers in a particular industry, in addition to the nature of the security loaned and measured by the type of collateral received, as set forth in the application. FMR will inform each Fund's board of trustees of the actual rates of returns to the Fund on loans with each borrower. Each Fund's board of trustees periodically will review the Schedule of Rates. All loans to FBS will provide for at least the return indicated in the Schedule of Rates. Loans of particular securities can be made at a rate of return higher than the minimum required by the Schedule of Rates, due to factors such as the relative scarcity of such security. All loans of securities meeting the same criteria, e.g., scarcity, will be made at the same rate of return regardless of the borrower. If a security is loaned at a rate of return higher than the minimum required by the Schedule of Rates, all comparable loans to FBS will be made at no less than the higher rate.

Applicants' Conditions:

If the requested order is granted, Applicants expressly consent to the following conditions:

1. The Funds will make at least 50% of their portfolio securities loans to borrowers other than FBS.

2. A Fund may not loan portfolio securities to FBS if, at the time such loan is made, more than 10% of its net assets would be loaned to FBS.

3. A Fund will not make any loan to FBS unless, at the time such loan is made, the income attributable to such loan is anticipated to cover the transaction costs incurred in making such loan. The Fund's board of trustees will review at least quarterly the actual income earned by the Fund in lending securities to FBS in relation to the actual transaction costs incurred by the Fund in making such loans.

4. A Fund will realize a minimum annualized return on loans (other than of Treasury obligations) to FBS equal to not less than 1/2% of the market value of cash collateral, or 1/2% of the market value of the securities lent; or (for Treasury obligations) not less than 1/4% of cash collateral or 1/4% of the face amount of the securities lent.

5. The boards of trustees of the Funds, including a majority of the trustees who are not interested persons. (a) will determine no less frequently than quarterly that all transactions with FBS effected during the preceding quarter were effected in compliance with the requirements of the Procedures and the conditions of any order permitting such transactions and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a witten copy of the

Procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned or the face amount of the securities loaned, the amount reallowed to the Fund, the identity of the borrower, the terms of the loan and the information or materials upon which the finding was made that each loan made to FBS was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth above.

7. The Funds will only accept cash or U.S. government securities as collateral for securities loaned to FBS.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10458 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16389; 812-6733]

Kidder, Peabody Acceptance Corporation I; Notice of Application

May 4, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Amendment to the Order of Exemption (the "Application") under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Kidder, Peabody Acceptance Corporation I (the ("Applicant").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant seeks to amend a Section 6(c) exemptive order issued on February 24, 1987 (Investment Company Act Release No. IC-15584) ("Previous Order"), to permit the sale of certain beneficial interests in any Trust (as defined in the Application) to certain "accredited investors," as redefined in Rule 501(a) of the Securities Act of 1933, as amended (the "1933 Act") and the Application.

Filing Date: The Application was filed on May 21, 1987, and amended on February 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549; Applicant, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Special Counsel, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant requests that its Previous Order be amended to expand the category of investor to whom Applicant may sell beneficial interests in each Trust. In addition to the issuance and sale of the Bonds, Applicant intends to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors or, under this amended order, to other non-institutional investors who customarily engage in the purchase of mortgages or mortgage collateral in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under Section 4(2) thereof. A beneficial interest in a Trust will be offered and sold only to: (i) institutions; or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act and as further limited below ("Eligible Owners"). Institutional investors will have such knowledge and experience in financial and business matters as to be capable of evaluating the risks of purchasing such beneficial interests and understanding the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of such beneficial interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risks of purchasing a beneficial interest in a Trust and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Eligible Owners will be limited to mortgage lenders, thrift instituitons, commercial and investment banks, savings and loan association, pension funds, employee benefit plans, insurance companies, mutual funds (which will continue to satisfy themselves that purchases of such obligations comply with the provisions of Section 12(d)(1) of the 1940 Act), real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities. The subsequent transfer of the beneficial interests in the Trusts will also be limited to private placements to such Eligible Owners. Each Eligible Owners will be required to represent that it is purchasing such beneficial interests for investment purposes. In additon, the Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred owners of such certificates at any time.

2. The relief requested by the Application is 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.

Applicant's Condition

Applicant agrees that that all representations in the Application as regarding the beneficial interests, and their offering to Eligible Owners, will be express conditions to the requested amended order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10459 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24638]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 5, 1988.

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 amendment(s) 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 May 31, 1988 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.

Appalachian Power Company (70-7498)

Appalachian Power Company ("APCo"), 40 Franklin Road S.W., Roanoke, Virginia 24011, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application pursuant to Section 9(c)(3) of the Act.

APCo proposes to subscribe to and acquire 10,000 shares, at a total purchase price of $100,000, of Class B (non-voting) Common Stock of Roundtable Venture Fund, Inc. ("Roundtable"), a West Virginia capital company organized to encourage and assist in the creation, development or expansion of West Virginia businesses. Roundtable is subject to supervision and regulation by the West Virginia Industry and Jobs Development Corporation. Upon certification of an investment in Roundtable under the Capital Company Act, an investor is entitled to a credit in the amout of 50% of its investment against certain West Virginia taxes.

It is not anticipated that Roundtable will at any time be an "affiliate" of APCo, as that term is defined in Section 2(a)(11) of the Act, since APCo will own less than 5% of the outstanding common stock of Roundtable upon completion of the proposed transaction. In addition, APCo will not be represented on the Board of Directors of Roundtable or otherwise seek to exercise influence with respect to Roundtable.

Jersey Central Power and Light Company et al. (70-7514)

Jersey Central Power & Light Company ("JCP&L"), 161 Madison Avenue, Morristown, New Jersey 07960 and Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605, both subsidiaries of General Public Utilities Corporation, a registered holding company, have filed an application pursuant to Sections 9(a) and 10 of the Act.

JCP&L and Met-Ed, together with five unaffiliated electric-utility companies, are co-owners as tenants-in-common, of the Merrill Creek Reservoir Project located in Harmony Township, New Jersey ("Merrill Creek"). JCP&L and Met-Ed each own an 8.37% undivided ownership interest ("Ownership Interest") in Merrill Creek. Merrill Creek generally consists of a 650 acre reservoir located on approximately 2,000 acres of real estate, a dam, dikes, a pumphouse, pumps, pipeline and related works and appurtenant equipment and facilities. Merrill Creek will provide make-up water to the Delaware River during times of drought to compensate for water consumed by the co-owners' electric generating stations situated in the Delaware River Basin, as required by the Delaware River Basin Commission.

In order to refinance their portions of the cost of construction of Merrill Creek, JCP&L and Met-Ed each propose to sell and lease back their respective Ownership Interests. JCP&L and Met-Ed would each enter into separate Participation Agreements generally providing for the sale of their Ownership Interests to a trustee acting on behalf of an equity investor or investors ("Owner Trustee/Lessor"), and the simultaneous lease of such Ownership Interests pursuant to separate net lease agreements ("Lease") to be entered into with the Owners Trustee/Lessor, which will not exceed a term of 45 years. The purchase price for each Ownership Interest will be equal to the fair market value thereof as determined by independent appraisal, and estimated to be about $25 million.

A portion of the purchase price for each Ownership Interest will be financed through the issuance by the Owner Trustee/Lessor of a separate series of non-recourse bonds by private placement to one or more institutional purchasers. Each series of bonds will be issued under and pursuant to a Trust Indenture, Mortgage and Security Agreement ("Indenture"). Under the Indenture, the Owner Trustee/Lessor will grant a first lien on security in all right, title and interest in and to its Ownership Interest in Merrill Creek, rental and other payments due under the Lease and all other rights acquired by the Owner Trustee/Lessor with respect to Merrill Creek as security for payment of principal of, and premium and interest on, the bonds. JCP&L and Met-Ed will not be the issuer of any bonds nor will they guarantee payment of any principal of, or premium or interest on, any bonds. The sole source of payments for each series of bonds will be the rental and other payments under the Lease which payments will be absolute and unconditional obligations of JCP&L and Met-Ed.

JCP&L and Met-Ed will also agree to provide indemnifications against certain liabilities, including certain state and federal income taxes liabilities in connection with the transaction.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-10460 Filed 5-10-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINSTRATION

[Declaration of Disaster Loan Area # 2313]

Florida; Declaration of Disaster Loan Area

Madison County in the State of Florida constitutes a disaster area because of damages from a tornado which occurred on April 19, 1988. Applications for loans for physical damage may be filed until the close of business on July 5, 1988 and for economic injury until the close of business on February 3, 1989 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Boulevard, 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates arent:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 231312 for physical damage and for economic injury the number is 662000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: May 3, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-10479 Filed 5-10-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1193]

Overseas Schools Advisory Council; Notice of Meeting

The overseas Schools Advisory Council, Department of State, will hold its Annual meeting on Wednesday, June 1, 1988, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council Program of Educational Assistance.

(a) Final Reports of 1986 Program and Program Report on 1987 Program.

(b) Report on Meeting with Executive Directors of the Overseas Schools Regional Assiociation in San Diego, California on February 15, 1988.

(c) Progress Report of the Subcommittee to Increase the Participation of U.S. Corporations and Foundations in Council Programs.

(d) Recommendations of the Subcommittee To Explore New Formats and Ideas for Future Council Programs.

II. Highlights of Carnegie Report on Urban Education.

III. Overseas Schools Fund Raising Drives and Activities of Overseas Schools Regional Associations.

(a) Report of the Subcommittee to Increase U.S. Firms Participation in Local Activities of the American-Sponsored Overseas Schools.

IV. Council Communication with U.S. Corporations and Foundations.

V. Selection of Date of Council's Executive Committee Meeting.

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas School Advisory Council, Department of State, Room 234, SA-6, Washington, DC 20520 or telephone Ms. Joyce Bruce on area code 703-875-6220, prior to June 1. The public may participate in discussions at the Chairman's instructions.

Date: May 6, 1988.

Ernest N. Mannion,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 88-10561 Filed 5-10-88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 28093; Order 88-5-14]

Varig, S.A.; Order Disapproving Schedules

Issued by the Department of Transportation on the 28th day of April, 1988.

By Order 75-7-95, the Civil Aeronautics Board required Varig to file its schedules under Part 213 of the Economic Regulations (14 CFR Part 213). After Brazil denounced the U.S. bilateral aviation agreement in 1982, and subsequent negotiations failed to resolve the countries' aviation differences, the CAB in 1984 granted Varig exemption authorityh in lieu of its foreign air carrier permit and continued the Part 213 schedule-filing requirement. Order 84-4-104. This requirement has been maintained through all subsequent renewals of Varig's authority.

On April 14, 1988, Varig filed schedules, which it proposes become effective May 18, which would change its existing pattern of U.S. services significantly. Varig would, among other things, substitute B-747-400 passenger aircraft for certain "combi" equipment on which part of the main-deck capacity was configured for transportation of cargo.

As explained in more detail in Order 88-4-80, Varig's proposeds schedule change comes at a time when the Government of Brazil has frustrated U.S. efforts to secure additional capacity in the U.S.-Brazil market for U.S. air carriers. We have determined that it would not be in the public interest to allow Varig to improve its services to the United States while U.S. carriers services to Brazil continue to be limited. We have decided, therefore, to take such actions as are necessary to maintain the *status quo* in Brazilian carrier service to the United States. Order 88-4-80 at 3. In that order, we denied Varig's request for exemption authority to operate extra flights during the coming peak travel season and to operate the incremental frequency equivalent in its proposed schedule that would exceed the limitation formula applicable to Varig services.

For the same reasons, we conclude that operation by Varig of its proposed schedules would adversely affect the public interest. Varig may continue to operate its present schedule, operating the same number of flights, between the same points, at the same times, and with the same equipment. (Varig may, of course, file amended schedules to change flight times, nomenclature or routing that would be deemed not to significantly improve its services and thus not be adverse to the public interest.)

Accordingly, 1. We disapprove the schedules Varig, S.A., filed with this Department on April 14, 1988;

2. Unless disapproved by the President under 14 CFR 213.3(d), this order shall become effective on the eleventh day after its submission for review under that section, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this order under that section, whichever occurs earlier;[1]

3. This order shall remain in effect until further order of the Department; and

4. We shall serve this order on Varig, S.A., the Ambassador of Brazil in Washington, DC, and the U.S. Department of State (Office of Aviation).

We will publish this order in the Federal Register.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-10554 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-62-M

[1] This order was submitted for review on April 28, 1988. On May 5, 1988, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

DEPARTMENT OF TREASURY

Internal Revenue Service

[Delegation Order No. 11]

Delegation of Authority; Division Chiefs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Allows redelegation of authority from the District Director to accept or reject offers in compromise to the level of Division Chief. Distinctions between the level of authority required to approve or reject offers in compromise above or below $250,000 have also been eliminated. The text of the delegation order appears below.

EFFECTIVE DATE: May 10, 1988.

FOR FURTHER INFORMATION CONTACT: Don Schumacher, CO:E, Room 7535, 1111 Constitution Ave., NW., Washington, DC 20224. Telephone Number (202) 566–4471 (not a toll-free number).

Don Schumacher,

Section Chief, Special Procedures Section.

[Order No. 11 (Rev. 18)]

Effective Date: 5–10–88

Authority To Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Order Nos. 150–04 and 150–09, 26 CFR 301.7122–1 and 26 CFR 301.7701–9, and Treasury Order No. 150–13 is hereby delegated as follows:

1. The Deputy Assistant Commissioner (international), the Associate Chief Counsel (Technical and International), Assistant District Directors, Regional Counsel, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegated to District Directors may not be redelegated lower than Division Chief; except that the authority with respect to the withdrawal of an offer in compromise based upon doubt as to collectibility may be redelegated to Chief, Special Procedures. The District Director in a streamlined district may not redelegate this authority. The authority delegated to Regional Counsel may not be redelegated, except that the authority to reject offers in compromise may be redelegated, but not lower than to District Counsel. Regional Director of Appeals, Chiefs and Associate Chiefs, Appeals Offices, may not redelegate this authority.

2. Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised, and to summarily reject without further investigation, offers based solely on doubt as to liability regardless of the amount of the liability sought to be compromised, limited to obvious offers that are frivol, groundless or dilatory, or where the liability has been finally determined by the Tax Court or other courts, or by a Commissioner's final closing agreement, or where the offer is based upon an agreed liability in which administrative appeal rights have been exercised or waived. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may be redelegated only to the Chief, Compliance Division.

3. Delegation Order No. 11 (Rev. 17) effective October 31, 1987 is superseded.

Dated: March 25, 1988.

Approved.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 88–10520 Filed 5–10–88; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

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).

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-11]

TIME AND DATE: Tuesday, May 10, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitioners and Complaints.
5. Inv. 303-TA-19, -20 and 731-TA-391/399 (P) (Antifriction Bearings (other than tapered roller bearings) from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom—briefing and vote.
6. Inv. 731-TA-377 (Final) (Internal Combustion Fork-Lift Trucks from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary.* (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 29, 1988.

[FR Doc. 88-10566 Filed 5-6-88; 4:55 pm]

BILLING CODE 7020-02-M

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME AND DATE: 7:30 a.m.—Monday, May 16, 1988.

PLACE: Federal Reserve System, 20th and Constitution NW., Private Dining Room, (Eccles Building, C Street Entrance), Washington, DC 20551.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications, 376-2623.

AGENDA:

I. Call to Order and Remarks of Chairman.
II. Consideration of May 12, 1988 Personnel Committee Meeting Report Regarding: (A) Performance Appraisal Policy for Corporate Officers; and (B) Officer Compensation Policy.

Carol J. McCabe,

Secretary.

[FR Doc. 88-10633 Filed 5-9-88; 3:09 pm]

BILLING CODE 7570-01-M

Corrections

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 75G-0265]

Nisin Preparation; Affirmation of GRAS Status as a Direct Human Food Ingredient

Correction

In rule document 88-7459 beginning on page 11247 in the issue of Wednesday, April 6, 1988, make the following correction:

On page 11249, in the first column, in the second complete paragraph, in the 10th line, "50" should read "40".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 88N-0048]

Antibiotic Drugs; Erythromycin Topical Gel

Correction

In rule document 88-8151 beginning on page 12414 in the issue of Thursday, April 14, 1988, make the following corrections:

1. On page 12414, in the third column, in the second paragraph, in the 20th line, "hearing" should read "heading".

2. On the same page, in the same column, in the third paragraph, in the 18th line, "fact" should read "face".

§ 452.510e [Corrected]

3. On page 12415, in the first column, in § 452.510e(a)(1), in the second line, "identify" should read "identity".

4. On the same page, in the second column, in § 452.510e(b), in the 14th line, "of" should read "to".

5. This document also corrects the heading which should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 866, 876, 895 and 1002

[Docket No. 87N-0373]

Medical Devices and Radiological Health Regulations; Editorial Amendments

Correction

In rule document 88-7526 beginning on page 11251 in the issue of Wednesday, April 6, 1988, make the following corrections:

On page 11253, in the third column, the amendatory instructions that were incorrectly numbered as "35", "36" and "34" should read "38", "39" and "40" respectively. Also, on page 11254, in the first column, the amendatory instructions that were incorrectly numbered as "34" and "36" should read "42" and "43" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. 80N-0428]

Colorants for Polymers

Correction

In proposed rule document 88-7425 beginning on page 11402 in the issue of Wednesday, April 6, 1988, make the following corrections:

1. On page 11407, in the third column, in the last paragraph, in the third line, "§ 3279" should read "§ 178.3297".

2. On page 11408, in the table, in the entry for item 23, in the third column, in the fifth line, remove "green.".

3. Also in the table, in the same column, in the entry for item 25, in the second line, "additional" should read "other".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0103]

Determination of Regulatory Review Period for Purposes of Patent Extension; Deursil®

Correction

In notice document 88-8152 beginning on page 12463 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12464, in the first column, in the first complete paragraph, in the last line, "21 CFRA 10.30" should read "21 CFR 10.30".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88E-0068]

Determination of Regulatory Review Period for Purposes of Patent Extension; Spectamine®

Correction

In notice document 88-8150 beginning on page 12464 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12464, in the second column, under **SUPPLEMENTARY INFORMATION**, in the third paragraph, in the second line, after "Spectamine®" insert "(Iofetamine HC1, I-123 injection), which is recommended".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1907 and 1910

[Docket No. S-110]

Safety Testing or Certification of Certain Workplace Equipment and Materials: Deletion of Specific Testing Laboratory Names; Definition of Nationally Recognized Testing Laboratory; Determination of Eligible Testing Organizations

Correction

In rule document 88-7782 beginning on page 12102 in the issue of Tuesday, April 12, 1988, make the following correction:

§ 1910.7 [Corrected]

On page 12120, in the third column, in § 1910.7(b)(2)(i), in the first line, remove "of".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 80351-8051]

Pacific Halibut Fisheries

Correction

In rule document 88–7191 beginning on page 10536 in the issue of Friday, April 1, 1988, make the following correction:

§ 301.6 [Corrected]

On page 10539, in § 301.6, in paragraph (a), the table should read as follows:

TABLE 1.—Regulatory Area Fishing Periods

2A	2B	2C–3A–3B	4A	4B	4C	4D	4E
6/26–7/01	5/06–5/14	5/23–5/24	5/23–5/24	5/23–5/24	6/20–6/21	8/02–8/09	6/01–6/03
7/25–7/30	[1]–6/12	6/20–6/21	6/20–6/21	6/20–6/21	6/22–6/23	9/16–[1]	6/04–6/06
8/31–[1]	[1]–8/25	9/07–9/08	8/05–8/06	8/04–8/07	6/24–6/25		6/07–6/09
		10/03–10/04	9/07–9/08	9/07–9/08	6/26–6/27		6/10–6/12
		10/17–[1]	9/16–[1]	9/16–[1]	6/28–6/29		6/13–6/15
					6/30–7/01		6/16–6/18
					7/02–7/03		6/19–6/21
					7/04–7/05		6/22–6/24
					7/06–7/07		6/25–6/27
					7/08–7/09		6/28–6/30
					7/10–7/11		7/01–7/03
					7/12–7/13		7/04–7/06
					7/14–7/15		7/07–7/09
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[1] Date to be announced by the Commission.

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Part II

Department of Transportation

Research and Special Programs Administration

City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-23; Docket IRA-40B]

City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials

Applicants: National Tank Truck Carriers, Inc. (NTTC) and American Trucking Associations, Inc. (ATA).

City Regulations Affected: City of New York Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle, Sections II, III, IV, and V.

Applicable Federal Requirements: Hazardous Materials Transportation Act (HMTA) (Public Law 93–633, 49 App. U.S.C. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 through 179) issued thereunder.

Mode Affected: Highway.

Issue Date: May 5, 1988.

Ruling: Sections IIB, IIC, IID, III, IV, and VD of the City of New York's Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Section VF of the City's Regulations is consistent with the HMTA and the HMR and, therefore, not preempted.

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Sections II, III, IV, and V of the City of New York Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

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I. Background

A. Chronology

On April 13, 1987, the National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations, Inc. (ATA) applied for an administrative ruling to determine whether certain City of New York Fire Department hazardous materials routing and time of transit regulations are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA.

The applicants also requested a ruling concerning the consistency of certain hazardous materials routing regulations of the Port Authority of New York and New Jersey. On January 29, 1988, however, the applicants withdrew their application concerning the Port Authority regulations on the ground that the Port Authority had amended the regulations at issue.

On May 18, 1987, OHMT published a Public Notice and Invitation To Comment soliciting public comments on the ATA/NTCC application. Detailed comments were filed by the applicants (together with the National Paint & Coatings Association, Inc.) and by the City of New York (the City). Comments in support of the ATA/NTCC position were filed by the Union Carbide Corporation and the New Jersey Turnpike Authority.

The applicants' request for a similar ruling concerning Directives 3–76, 5–63, 6–76, and 7–74 of the City of New York Fire Department's Bureau of Fire Prevention is the subject of a separate docket (IRA–40B) and was addressed in a separate inconsistency ruling. IR–22, 52 FR 46574 (Dec. 8, 1987); correction, 52 FR 49107 (Dec. 29, 1987); notice of appeal, 53 FR 5538 (Feb. 24, 1988). Those directives require tank truck carriers to obtain City permits before transporting compressed gases, flammable and combustible liquids, and flammable and combustible mixtures in the City.

B. General Authority and Preemption under the HMTA

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state or local action. The HMTA preempts only those state and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. 1192, 93 Cong., 2d Sess., 37–38 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress apparently intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR Part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 App. U.S.C. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such

determinations in its inconsistency ruling process.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, U.S. Supreme Court decisions in preemption *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlanta Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to accomplishing and executing the HMTA and the HMR; a requirement which is such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the OHMT's regulatory program.

II. Effect of Pending Litigation

The City requests that OHMT abstain from issuing an inconsistency ruling until the U.S. District Court for the Eastern District of New York reviews the record before the Court and makes findings in a pending court case, *National Paint & Coatings Assn., Inc. v. City of New York* (E.D. N.Y., 84 CV 4525), in which ATA is one of the plaintiffs. For the reasons discussed in detail in IR–22, *supra*, pp. 46575–6, OHMT will not abstain from issuing an inconsistency ruling concerning these issues. Thus, in light of OHMT's intent to preempt certain areas, the existence of the inconsistency ruling process for the issuance of advisory opinions concerning such issues, and the potential that an inconsistency ruling might assist in resolution of the pending judicial proceedings, OHMT will address the issues raised by the applicants.

III. City of New York's Time of Transit and Routing Regulations

A. Overview

This proceeding concerns Section III (Time of Transit) and Section IV (Routing) of the City of New York's Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle, as well as related provisions in Section II and V of those Regulations. Section II (Scope) of those Regulations limits their application (Section II B) to shipments in interstate and intrastate commerce passing through the City without pickup or delivery and to deliveries to piers, airports and shipping terminals for transshipment out of the City. In addition, Section II A specifies that those regulations apply to certain defined "Hazardous cargoes" but not to numerous other "commodities" which constitute hazardous materials under 49 CFR Part 172, Subpart B. Finally, Section II D provides that motor vehicles meeting the Fire Department regulations at issue (and found inconsistent) in IR–22, *supra*, need not conform to the routing and time requirements at issue here.

Section III requires "hazardous cargo" shipments through the City to be transported on weekends or holidays, or during specified non-rush hours on non-holiday weekdays. Permissible weekday times are: (1) for explosives and prohibited materials for which specific fire Department permission has been obtained: 10 a.m.–3 p.m. and 7 p.m.–6 a.m.; (2) for all other "hazardous cargo": 9 a.m.–4p.m. and 6 p.m.–7 a.m. Weekend and holiday traffic is restricted "[a]s traffic conditions permit, consistent with the rules and regulations of government agencies and/or authorities having jurisdiction." In addition, Section III allows explosives shipments only during daylight hours, although exceptions may be obtained for escorted nighttime shipments.

Section IV contains 14 typewritten pages of detailed hazardous materials routing requirements specifying which particular highways must be used to go from one specified location to another (e.g., "FROM NEW JERSEY TO WESTERN PORTION OF WESTCHESTER COUNTY AND UPSTATE NEW YORK," "FROM NEW JERSEY TO EASTERN WESTCHESTER COUNTY, UPSTATE NEW YORK AND NEW ENGLAND," etc.).

Section V (General Rules Applicable to Hazardous Cargo Shipments Passing Through the City) contains two subsections which are challenged by the applicants. Subsection D provides: "Vehicles, when transporting hazardous cargo through the City, shall not be fueled in the City of New York, nor shall any stop be made within the City, except as required by traffic." Subsection F states: "Vehicles transporting Hazardous Cargo shall avoid congested areas so far as is practicable and use highway exists as close as possible to final destination."

B. Applicants' Arguments

NTTC and ATA contend that the City's rush-hour prohibitions effectively ban the vast majority of hazardous materials-carrying vehicles meeting Federal requirements and acceptable throughout the rest of the Nation from passing through New York City during a significant part of the commercial workday. They argue that these time restrictions cause delays just outside the City and diversions around the City. They state that these impacts occur outside of, rather than in, New York City.

The applicants assert that the City's time and routing restrictions reduce the City's exposure to the inherent risks of hazardous materials transportation by exporting that risk to other jurisdictions. They allege that this cannot be done, under prior inconsistency rulings, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, and that the City has neither consulted or coordinated with surrounding jurisdictions nor evaluated the effect of its regulations on those jurisdictions. Applicants allege that the City's routing regulations force traffic to go around the City, thereby significantly increasing driving mileage and causing delays. In addition, they advance arguments concerning the necessity of routing hazardous materials around the George Washington Bridge because of the combined effect of the City's and the Port Authority's regulations. They allege that the latter regulations bar transportation using the only exit route (Washington Expressway) authorized by the City. The applicants conclude that the City's routing regulations are inconsistent with the HMTA, 49 CFR 177.853 and prior inconsistency rulings.

The gist of applicant's position is set forth in the following paragraphs of their comments:

The City's ban on DOT-specification equipment for *all* interstate shipments involving pick-up or delivery in New York City *and* its discriminatory restraints even on through shipments in DOT-specification equipment (only during certain times-of-day,

over specified, limited routes and subject to severe restraints on vehicle movement) are *per se* inconsistent with the HMTA. These restrictions are for all practical purposes local embargoes on interstate transportation of hazardous materials disguised as mere traffic controls.

* * * * *

The City does not prohibit the transportation of hazardous materials on *any* of its streets, nor does it impose any curfew restrictions if the vehicle used meets the City's technical specifications. *Assuming* that the City's special hazardous materials transportation regulations have a rational purpose, the City has clearly determined that hazardous materials can safely be transported at *all hours on all City streets* provided vehicles and drivers meet the level of safety required by New York City's regulations. As has been shown, however, City-specification equipment does not provide the level of safety achieved by DOT-specification equipment. Thus, the City's ban on pick-ups and deliveries in interstate commerce by DOT-specification equipment and the City's discriminatory restraints on routing, time-of-day and freedom of movement, applicable *only* to DOT-specification equipment, are clearly *not necessary* for safety.

But these bans and restraints do exert a serious re-routing impact and *resulting degradation of overall safety*. To avoid this adverse result on safety the City would have to engage in a thorough analysis of all relevant safety factors and a thorough coordination of routing and curfew restrictions *with* adjoining affected jurisdictions such as New Jersey DOT, Paramus, New Jersey, Westchester, Nassau and Suffolk Counties and upstate New York counties and municipalities. Therefore, even though local regulations dealing with traffic control may be appropriate, when, as in the case of New York City (and the Port Authority), local traffic regulations cause *significant re-routing* of traffic, *all relevant safety* factors must be considered *before* the regulations can be considered consistent with the HMTA.

C. City's Arguments

In response to the applicants' arguments, the City contends that its time and routing requirements are not inconsistent with Federal requirements, primarily because there are no conflicting Federal regulations on the routing of flammables, combustibles and compressed gases. The City points out that, although 49 App. U.S.C. 1804(a) authorizes the Department to issue routing rules, it has not done so for these particular hazardous materials.

The City cites the following two specific DOT regulations for the respective propositions that more stringent local requirements are permissible and that there is no intent to preempt state or local regulation in this area:

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of [DOT] which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint. [49 C.F.R. § 397.3.]

Except as otherwise specifically indicated, Parts 390–397 of this subchapter are not intended to preclude state or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the persons subject thereto. [49 C.F.R. § 390.30].

The City cites *Ray v. Atlantic Richfield*, 435 U.S. 151 (1978), for the proposition that a state may impose transportation restrictions when the Department of Transportation has neither promulgated such a requirement nor decided that such a requirement ought not be imposed. It argues that it is free to regulate the movement of flammable and combustible materials in the absence of any express inconsistent requirements in the HMTA or the HMR. The City further cites IR–1, 43 FR 16954 (Apr. 20, 1978) in support of this proposition.

The City provides the following summary of this argument:

The only federal HMTA regulations applicable to routing are those that require shippers to avoid densely populated areas, narrow streets and alleys, even if such routes would be more convenient for the shippers, 49 C.F.R. § 397.9(a), and that require hazardous materials to be transported without "unnecessary delay," 49 C.F.R. § 177.853(a). The New York City routing regulations allow a practicable alternative to travel through densely populated areas, narrow streets and alleys, and thus are consistent with these regulations. The City's curfew requirements, which restrict the transportation of flammables and combustibles to non-rush hours, impose only the amount of delay necessary to limit hazardous cargo to less heavily trafficked periods, when the risk of accidents is reduced and the ability of emergency response personnel to reach the scene in the event of an accident is improved.

In addition, the City contends that the application here is based on many of the same arguments raised—and lost—by NTTC in *City of New York v. Ritter Transportation, Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff'd sub nom National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982). In that case, the Federal courts refused NTTC's request for a declaratory judgment that the City's regulations for the transportation of hazardous gases were preempted by the Commerce Clause, the NMTA and 49 CFR 177.853. In denying that request for a declaratory judgment and entering the preliminary injunction requested by the City, the District Court said:

the purpose of 49 CFR 177.853(a), in requiring expeditious movement, was not to speed transportation for its own sake, but to protect the environs from unduly prolonged exposure to risks of fire and explosion.

515 F. Supp. 671.

The City summarizes this argument as follows:

The spirit of the *Ritter* opinion is equally applicable to the City's regulations for the routing of flammable materials. Clearly, the *Ritter* court upheld the principle that local authorities are generally in the best position to evaluate the special safety needs of densely populated urban areas, and that local judgment must not be disturbed absent compelling evidence to the contrary. The inconsistency petition before this forum is devoted of any facts which would warrant upsetting this established precedent, and Docket 40–B should be dismissed as insufficient as a matter of law.

D. Applicants' Rebuttal Arguments

The response to the foregoing arguments of the City, the applicants submitted rebuttal comments.

They first quote IR–3, 46 FR 18918 (Mar. 26, 1981) for the proposition that, for a local routing regulation to be consistent with the HMTA, the local jurisdiction must "act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." 46 FR 18922. Therefore, the applicants argue, the City cannot unilaterally adopt time and routing restrictions consistent with the HMTA. They contend that the City has unilaterally adopted its regulations without evaluating their impact on surrounding communities, that those restrictions are discriminatory restraints on through-shipments in DOT-specification equipment and not *bona fide* traffic control measures, that they constitute a self-serving exportation of perceived risk to surrounding communities, and that they therefore are inconsistent with the HMTA.

ATA/NTTC further assert that the City's argument about the need "to limit hazardous cargo to less heavily trafficked periods" is undermined by the City's own determination that hazardous materials can safely be transported at all hours on all City streets so long as the vehicles and drivers meet the City's regulations. The following are the applicants' conclusions concerning this argument:

As has been shown in great detail in Applicants' comments, however, equipment designed to City's specifications does not provide as high a level of safety as does equipment designed to DOT specifications. Thus, the City's ban on pickup and deliveries

in interstate commerce by DOT specification equipment and the City's discriminatory restraints on routing, time-of-day and freedom of movement applicable *only to* DOT specification equipment, are clearly not necessary for safety.

What these bans and restraints do is exert a serious rerouting impact and resulting degradation of overall safety. To attempt to avoid or mitigate this adverse safety impact, the City would have to engage in a thorough coordination of routing and curfew restrictions with adjoining affected jurisdictions such as the State of New Jersey, Paramus, New Jersey, Westchester, Nassau and Suffolk Counties and Upstate New York counties and municipalities. Therefore, even though local regulations dealing with traffic control may be appropriate when, as in the case of New York City, local traffic regulations cause significant rerouting of traffic, all relevant safety factors must be considered before the regulations can be considered consistent with the HMTA. The City has not, however, acted through a process that adequately weighs the external consequences of its regulations and, therefore, the City's routing and curfew restrictions are inconsistent with the HMTA.

Finally, the applicants argue that the *Ritter* decision relied upon by the City is distinguishable from this proceeding. They assert that the Court in *Ritter* considered only the City's virtually complete ban on tank truck transportation of compressed gases, a "ban" which applied to all vehicles carrying those gases. not just those meeting HMR requirements. In contrast, they point out, the flammable materials routing and time restrictions at issue here are only applicable to equipment meeting HMR requirements and that "City-specification vehicles can go into, out of and through the City for pickups, deliveries or through shipments *without the burden of any* of the City's routing and time-of-day restrictions." Thus, they argue, the Court conceivably could find some safety benefit for the virtually total "ban" at issue in *Ritter*, but such benefits are not present here where the City discriminates in favor of those vehicles which do not provide the level of safety afforded by vehicles and equipment meeting HMR requirements.

In addition, the applicants argue that there is a more fundamental reason to invalidate the City's *Ritter*-based argument. They assert that the *Ritter* Court did not consider the impact of the City's routing restrictions on other jurisdictions—a relevant inconsistency factor under IR–3, *supra*. Although this issue was raised on appeal in that case, the Court of Appeals declined to address the issue because of a question of the parties' "standing" to raise the issue. *National Tank Truck Carriers, Inc. v. City of New York, supra.*

In summary, the applicants conclude: "That part of the *Ritter* opinion that upheld the Fire Department's routing and time-of-day restrictions as applied to tank truck transportation of hazardous compressed gases, provides no authority as to the City's regulations for routing flammable materials."

E. Ruling

1. Equipment-related Requirements

Section II D of the City's regulations allows motor vehicles conforming to the City's Fire Department specifications and under Fire Department permit to transport hazardous materials in the City without conforming to the routing, time, escort and other restrictions in the City's regulations. Section II D also requires the use of such City-permitted vehicles for deliveries for storage or use or for pickups in the City; this provision conversely bans non-City-permitted vehicles from making such deliveries and pickups even though they meet all HMR requirements.

Those requirements, however, are inconsistent under the "obstacle" test because they are inextricably related to other City provisions which already have been determined to be inconsistent with the HMTA and the HMR. In IR–22, *supra*, OHMT, applying the "obstacle" test, found inconsistent with the HMTA and the HMR the City's Bureau of Fire Prevention Directives containing the vehicle and equipment specifications and permitting system referenced by Section II D. As indicated in IR–22, 52 FR at 46584, the City may not impose routing, time, escort and other restrictions on vehicles carrying hazardous materials and then exempt all Fire Department-permitted vehicles from those restrictions—as it has done in Section II D. Routing and time requirements which are based upon an inconsistent permitting system create an obstacle to the accomplishment and execution of the HMTA and the HMR and, therefore, are themselves inconsistent with the HMTA and the HMR. Therefore, the City's ban on hazardous materials deliveries and pickups by non-City-permitted vehicles is inconsistent with the HMTA and the HMR.

In addition, all other issues aside, to be consistent with the HMTA and the HMR with respect to routing and time issues, the City would have to eliminate either (1) the inconsistent Section II D exemption for City-approved motor vehicles or (2) its routing and time restrictions.

2. Mootness of Port Authority-Related Issues

As previously indicated, the applicants withdrew their request for an inconsistency ruling concerning certain routing regulations of the Port Authority of New York and New Jersey because the regulations at issue have been amended by the Port Authority.

Although the applicants withdrew their application only with respect to the Port Authority regulations and not with respect to any of the City's regulations. the withdrawal did have an effect on applicants' challenge of the City's regulations. This effect was caused by the fact that applicants had argued that the Port Authority regulations *prohibited* most hazardous materials-carrying vehicles from exiting the George Washington Bridge via the Washington Expressway, that the City's regulations *required* them to exit that Bridge via the Washington Expressway, and that the combined effect of the Port Authority and City regulations constituted a ban of bulk transportation of flammable materials and a great restriction of dry freight transportation of flammable materials over the George Washington Bridge. The applicants contended that the combined effect of these regulations thus forced a diversion of transportation around the City, thereby adding considerable driving time and mileage to all of those hazardous materials shipments.

Because the Port Authority has amended the regulations in question to eliminate the restrictions criticized by the applicants, the issues and arguments concerning the combined effects of the Port Authority's and City's regulations have become moot.

3. City's Routing Requirements

As indicated above, insofar as the City's Section II D purports to ban non-City-permitted motor vehicles from making hazardous materials deliveries and pickups in the City, it creates an obstacle to the accomplishment and execution of the HMTA and the HMR, constitutes an inconsistent cargo containment and related equipment requirement, and, therefore, is preempted by the HMTA. IR–22, *supra*. The ruling being issued herein, therefore, addresses the City's routing requirements for through-traffic.

Under Section II B of the City's regulations, the City's routing regulations *per se* (Section IV) do not apply to deliveries and pickups generally but instead apply only to shipments passing through the City and to deliveries to piers, airports and

shipping terminals for transshipment out of the City. Therefore, the issue to be resolved here is the consistency with the HMTA and the HMR of the City's detailed through-shipment-only routing requirements. Those requirements (Section IV of the City's Regulations) specify in detail the exact routes required to be used for transporting many hazardous materials into, through and out of the City to and from New Jersey, Westchester County, Nassau County, Suffolk County, Upstate New York, New England, LaGuardia Airport, J.F.K. International Airport, Staten Island piers, Brooklyn piers, Manhattan piers, and to certain truck and railroad terminals.

(Those regulations and Section V H 2 contain statements that the Triborough Bridge and Tunnel Authority prohibits explosives transportation on the Verrazano Narrows Bridge, the Whitestone Bridge and the Triboro Bridge; that prohibition, however, was found inconsistent in IR–20, 52 FR 24396 (June 30, 1987).)

The City relies upon two Federal Highway Administration regulations, 49 CFR 397.3 and 390.30, as support for its routing restrictions. Because these regulations were not issued under the authority of the HMTA, they are not relevant to HMTA preemption issues unless specifically incorporated by reference in the HMR. Such a specific incorporation by reference has not occurred. In fact, § 177.804 of the HMR explicitly excludes § 397.3 from its general requirement for compliance with 49 CFR Parts 390 through 397. In addition, insofar as § 390.30 is concerned, the preamble to the final rule issuing § 177.804 stated that § 177.804 did not alter the preemptive effects of Parts 390 through 397 (including § 390.30); that is, the promulgation of § 177.804 did not *ipso facto* make those sections relevant to the scope of preemption under the HMTA.

In addition, the General Counsel of DOT in 1976 issued an opinion letter to the Nuclear Regulatory Commission explaining that § 397.3 is not as broad as the City reads it. In relevant part, § 397.3 states: "Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated * * *." That General Counsel's Opinion concluded that, in light of the regulatory history and context of that section, it "cannot be read more broadly than to require compliance with State and local laws, ordinances, and regulations relating to the 'mechanics of driving and handling of vehicles' of the type contained in Part 397." ion or authorize the City's routing regulations at issue here.

As indicated above, the relevant regulation for comparison purposes is § 177.853(a), which was promulgated under the HMTA and provides:

(a) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination.

IR–3, *supra*, and IR–3 (Appeal), 47 FR 18457 (Apr. 29, 1982) are the leading inconsistency decisions examining the meaning of "unnecessary delay." At issue in those decisions was a City of Boston ban on the use of City streets for hazardous materials through-traffic. The basic test for consistency was set forth in IR–3:

For consistency with the HMTA, however, Boston must act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules.

46 FR 18922. This standard was expanded upon in the Decision on Appeal:

Little information is provided on the City's administrative process or the State approval process, but neither appears to have been a functional substitute for active involvement of affected jurisdictions. The process used provided public notice, as well as resulting news articles, in Boston newspapers, and public hearings were held on both the ordinance and the regulations. However, from the information provided in the proceeding on IR–3 and this appeal, it appears that Boston did not identify affected jurisdictions outside Boston or contact those jurisdictions, in preparation of either the ordinance or the regulations. We also cannot tell whether a risk analysis, or any other clear statement identifying possible impacts of the proposed actions and where those impacts might occur, was available at the time the regulations were considered.

44 FR 18460.

Although IR–3's conclusions of inconsistency concerning Boston's routing requirements were withdrawn on appeal in the interest of fairness to Boston (since the standards had not been enunciated previously), the dual requirements for a safety analysis and consultation with other affected jurisdictions remained intact in IR–3 (Appeal):

Boston's process was largely completed before DOT had addressed highway routing of hazardous materials in any detail and was not conducted with a view to evaluation in an inconsistency ruling. As discussed above, we are of the view that Boston's apparent failure to consult with, or to consider safety impacts on, other affected jurisdictions, makes it impossible for us to conclude that the routing requirements are consistent. However, we are sensitive to the argument that, since Boston could not have known our views at the time it adopted its requirements, those requirements should not be held invalid solely on procedural grounds if their net effect is an overall increase in public safety. Therefore, if there were substantive interjurisdictional consultation or agreement that the data presented in the appeal is both accurate and representative, we would find required use of the bypass route to be consistent with the HMTA and the HMR. Because no such consultation or agreement appears to have occurred, we consider the results of the analysis indeterminate.

47 FR 18462.

These same principles were reiterated in IR–6, 48 *Fed. Reg.* 760 (Jan. 6, 1983), where a Covington, KY prenotification requirement was found inconsistent:

* * * Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risk inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0–31–80 impedes both purposes. By delaying hazardous materials shipments and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportation; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extent that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude.

48 FR 766.

It is significant to note that the courts which considered and sustained a different set of New York City routing regulations (for liquefied gases) *(City of New York v. Ritter Transportation, Inc., supra; Natonal Tank Truck Carriers, Inc. v. City of New York, supra)* did *not* discuss the necessity to coordinate those regulations with, and consider the impact upon, other affected jurisdictions. Although OHMT gives great deference to relevant court decisions in issuing its inconsistency rulings, Courts in rendering legal decisions in inconsistency preemption cases are limited to deciding the controversies and issues placed before them by the parties to those cases. The issue of consultations with affected jurisdictions was not raised by the parties in the *Ritter* Case at the District Court level, and the National Tank Truck Carriers, Inc.'s effort to raise the

issue on appeal was rejected because of its lack of standing. Those cases, therefore, did not discuss an issue critical here and thus have minimal precedential value for determining the consistency of the New York City regulations at issue in this proceeding.

In summary, without adequate safety justification and appropriate coordination with, and concern for the safety of the people in, adjoining affected jurisdictions, hazardous materials highway routing restrictions (including time restrictions) which result in increased transit times are inconsistent with § 177.853 of the HMR. They are inconsistent because they cause "unnecessary" delays and thereby create obstacles to the accomplishment and execution of the HMTA and the HMR. IR–1, *supra*; IR–2, 44 FR 75566 (Dec. 20, 1979); IR–3, *supra;* IR–3 (Appeal), *supra;* IR–10, 49 FR 46645 (Nov. 27, 1984), correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46647 (Nov. 27, 1984); IR–14, 49 FR 46656 (Nov. 27, 1984); IR–16, 50 FR 20672 (May 20, 1985); IR–20, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7. 1987).

Therefore, based upon the record in this proceeding, I find that Section IV of the City's Regulations is inconsistent with § 177.853.

For the same reasons, Section V D of the City's Regulations is inconsistent with the HMR. That section prohibits hazardous materials through-traffic from being fueled in the City and from stopping in the City ("except as required by traffic"). These bans on fueling and stopping are sub-categories of general bans and constitute forms of routing restrictions.

Insofar as the Section V D provisions constitute bans, they are inconsistent because the power to ban is exclusively Federal and local bans generally are inconsistent. IR–3, *supra*; IR–3 (Appeal), *supra*; IR–10, *supra*; IR–16, *supra*; IR–20, *supra*. In essence, the City's prohibition of fueling and stopping is an inconsistent attempt to resolve its perceived problems by effectively exporting them to other jurisdictions. *Kassel v. Consolidated Freightways*, 450 U.S. 662 (1981); IR–3, *supra*; 49 FR 46633 (Nov. 27, 1984).

Insofar as the Section V D provisions constitute routing restrictions, they have the same deficiencies as the City's general hazardous materials routing rules. That is, they were not preceded by a determination of effect on overall public safety or consultations with other affected jurisdictions and, therefore, are inconsistent with § 177.853(a).

On the other hand, there is no indication in the record that Section V F of the City's Regulations, which requires hazardous materials through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination, has any effect on other jurisdictions or otherwise is inconsistent with the HMTA or the HMR. In addition, Section V F, as local traffic control regulation, is presumed to be valid, IR–20, *supra*. Therefore, Section V F is consistent with the HMTA and the HMR.

4. City's Time Restrictions

Time restrictions have been addressed in several inconsistency rulings. The HMR requirement against which those restrictions have been tested again is § 177.853(a) of the HMR, which requires that highway carriers transport hazardous materials without unnecessary delay. To determine consistency, therefore, it is necessary to determine whether state or local time restrictions on hazardous materials transportation create "necessary" or "unnecessary" delays.

Two statewide sets of time restrictions have been found inconsistent. In IR–2, *supra*, Rhode Island's ban on liquefied gas shipments between 7–9 a.m. and 4–6 p.m. on weekdays was determined to be inconsistent with the HMTA and § 177.853(a) because it would cause significant transportation delays. The Ruling stated:

> One aspect of these delays likely involves trucks waiting in Massachusetts or Connecticut to enter Rhode Island. The Rhode Island Rule quite probably requires some motor vehicles to remain in Rhode Island's neighboring States longer than they would were such a Rule not in effect. In its attempt to protect its own citizens, Rhode Island is increasing the risks incident to such transportation to be incurred by the citizens of Massachusetts and Connecticut.

44 FR 75571. The finding of inconsistency was affirmed on appeal. IR–2 (Appeal), 45 FR 71881 (Oct. 30, 1980); Correction, 45 FR 76838 (Nov. 20, 1980). Those Rhode Island time restrictions also were held inconsistent by a Federal court in *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd* 698 F. 2d 559 (1st Cir. 1983).

The other statewide time restriction on hazardous materials transportation determined to be inconsistent was Connecticut's limitation of certain radioactive materials transportation to 9 a.m. to 4 p.m. on non-holiday weekdays. IR–21, 52 FR 37072 (Oct. 2, 1987). They were found to be "delay-inducing restraints" on transportation.

On the other hand, certain city-wide time restrictions on hazardous materials transportation have been found to be at least partially consistent with the HMTA and the HMR. In IR–3, *supra*, the City of Boston's prohibition of downtown hazardous materials transportation was found consistent insofar as it concerned service from or to points of origin or destination (pickups and deliveries) within Boston. In IR–3, time-of-day restrictions were described as a subset of general routing restrictions, which, therefore, must meet the above-described requirements (Section 3, *supra*) for routing restrictions in order to be found consistent. The determination that Boston's time restrictions on pickups and deliveries were consistent was based on the principles that pickup and delivery time restrictions are less likely to affect other local jurisdictions and are a more justifiable exercise of authority over local activities than time restrictions on through-traffic. Local governments, therefore, have greater flexibility in placing time restrictions on hazardous materials pickups and deliveries than on hazardous materials through-traffic.

Although Boston's time restrictions were found in IR–3 to be inconsistent insofar as they applied to through-traffic, that finding was withdrawn on appeal because Boston's process had been virtually completed before DOT had addressed the issue of highway routing. In IR–3 (Appeal), *supra*, therefore, no decision was rendered on the consistency of Boston's time restrictions insofar as they applied to through-traffic. As with routing requirements generally, that Decision on Appeal stands for the proposition that time restrictions on through-traffic hazardous materials transportation must be preceded by consultations with, and consideration of safety impacts on, other affected jurisdictions.

At about the same time as DOT was dealing with the Boston time restrictions in IR–3 and IR–3 (Appeal), the Federal courts were considering a City of New York time restriction. *City of New York* v. *Ritter, supra, aff'd sub nom. National Tank Truck Carriers, Inc.* v. *City of New York, supra*. Although the District Court found consistent the City's requirements for the routing of trucks carrying liquified gases, it did not specifically discuss time restrictions. On appeal, the Court of Appeals affirmed the District Court's decision and specifically mentioned a ban on such transportation between 6–10 a.m. and 3–7 p.m. As indicated in the preceding discussion of routing requirements, neither court considered whether coordination with other affected jurisdictions was required. In the course of rejecting a Commerce Clause argument, the Court

of Appeals commented that "* * * it is not clear that out-of-state truckers asserting a commercial burden have standing to represent the interests of Westchester or New Jersey residents in avoiding increased risks to which New York City might have exposed them without their political participation."

In the case at hand, the City has not availed itself of the flexibility provided in IR-3, *supra*, and IR-3 (Appeal), *supra*, to impose time restrictions on in-city pickups and deliveries. Instead it has chosen to ban pickups and deliveries by non-City-permitted vehicles—a form of discrimination found inconsistent in IR-22, *supra*, and earlier in this ruling—and then to impose time restrictions on through-traffic. Such time restrictions must be based on a safety analysis and be preceded by substantive consultations with all affected jurisdictions. IR-2, *supra*; IR-3, *supra*, IR-3 (Appeal), *supra*; IR-20, *supra*; *National Tank Truck Carriers, Inc.* v. *Burke, supra*.

Applicants have made the unrebutted assertion that the City has failed to coordinate its time restrictions with such affected jurisdictions as the States of New Jersey and Connecticut and the Counties of Nassau, Westchester and Suffolk, as well as Upstate New York Counties. In addition, the New Jersey Turnpike Authority filed the following unrebutted comments:

> The New Jersey Turnpike Authority has constantly expressed concern that these regulations were promulgated without consultation with adjacent State and local agencies. The New Jersey Turnpike Authority, operating the New Jersey Turnpike, has the responsibility to maintain a safe and efficient roadway, which roadway represents the main transportation corridor between Philadelphia and New York and the Northeast Transportation Network. Thus, of course, there is a vital and important interest by the Turnpike Authority in maintaining its responsibility that transportation proceed efficiently and safely through its facilities.
>
> The promulgation of New York City and Port Authority regulations causes concern since the time periods, that vehicles carrying certain classes of hazardous and toxic materials may travel, are so restricted as to cause vehicles to queue up at facilities of the Turnpike while awaiting to enter New York through the various Port Authority facilities. There is concern by the Turnpike Authority that this situation can result in a congregation of vehicles, particularly trucks at Turnpike Authority service areas.
>
> The Turnpike Authority, of course, has always been willing to work with its sister public agencies in order to promote and maintain the efficient and safe movement of traffic. The Turnpike Authority has concern that the City of New York and the Port Authority have not followed the effect of the Federal Department of Transportation's position regarding the movement of radioactive materials through routes designated by appropriate State agencies, 46 FR 5298, 5306 (1981). This ruling specifically comments on the need for consultation between neighboring state and local jurisdictions when any state or local jurisdiction formulates routing restrictions for radioactive waste transport.
>
> "A safety analysis as described must be performed to ensure reliable results, and the designating State agency must consult with affected local or neighboring State jurisdictions." 46 FR 5298, 5306 (1981).
>
> The New Jersey Turnpike Authority respectfully requests that the effect of these regulations be reviewed in order that the potential safety considerations on local jurisdictions be considered. The New Jersey Turnpike Authority will be willing at any time to meet and discuss its concerns with the City of New York and Port Authority.

Although the language cited by the Turnpike Authority was in the context of radioactive transportation, as indicated above, it is equally applicable to time restrictions on all hazardous materials through-traffic.

The City's "safety analysis" consists of findings that rush-hour bans on hazardous materials transportation reduce the likelihood of, and the consequences of, hazardous materials incidents and facilitate prompt emergency response to such incidents. However, this rationale is completely undercut by the City's allowing City-permitted vehicles carrying hazardous materials to ignore the time restrictions. Such discriminatory time restrictions apparently were not involved in the earlier *Ritter/NTTC/NYC* litigation, in which the District Court did find the City's container-testing requirements inconsistent with the HMTA and the HMR.

The City has failed to demonstrate an adequate safety justification for, and substantive consultation with other affected jurisdictions concerning, its time restrictions on hazardous materials transportation. Therefore, its time restrictions create unnecessary delays in the movement of hazardous materials transportation and thus are inconsistent with § 177.853(a) of the HMR.

IV. Summary

The City's routing and time restrictions have not been shown to have been based on an adequate safety analysis or to have been preceded by substantive consultations with other affected jurisdictions. They have a propensity to cause unnecessary delay, create obstacles to the accomplishment and execution of the HMTA and the HMR, are thus inconsistent with the HMTA and the HMR, and, therefore, are preempted.

V. Ruling

For the foregoing reasons and on the basis of this record, I find that Sections II B, II C, II D, III, IV, and V D of the City of New York's Fire Department Regulations for the Transportation of Hazardous Cargo through the City of New York by Motor Vehicle are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Section V F of the City's Regulations is consistent with the HMTA and the HMR and, therefore, not preempted.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on May 5, 1988.

[FR Doc. 88-10552 Filed 5-10-88; 8:45 am]

BILLING CODE 4910-60-M

Federal Register

Wednesday
May 11, 1988

Part III

Department of Education

Office of Postsecondary Education

Guaranteed Student Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending March 31, 1988.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Progam (GSLP), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending March 31, 1988, the special allowance will be paid at the following rates:

[In percent]

Applicable interest rate	Annual special allowance rate	Special allowance rate for quarter ending Dec. 31, 1987
I. GSLP, PLUS or Consolidation loans made prior to October 1, 1981:		
7	2.50	0.625
9	.50	.125
II. GSLP, SLS, or PLUS loans made on or after October 1, 1981, but prior to November 16, 1986, for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986:		
7	2.43	.6075
8	1.43	.3575
9	.43	.1075
12	0	0
14	0	0
III. GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loans made on or after November 16, 1986:		
7	2.18	.545
8	1.18	.295
9	.18	.045
10	0	0
11	0	0
12	0	0
13	0	0
14	0	0

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (5.93 percent for the quarter ending March 31, 1988);

(b) *Step 2.*

Subtract from the average the applicable interest rate of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.25 percent in the case of (i) GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans made at a fixed rate of interest either on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, or (iii) Consolidation loans made on or after November 16, 1986; and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 732–4242.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: April 19, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–10551 Filed 5–10–88; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
May 11, 1988

Part IV

Department of the Interior

Minerals Management Service

Economic Feasibility of Developing Deposits of Phosphorites in the Outer Continental Shelf and Exclusive Economic Zone; Offshore North Carolina; Notice

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Economic Feasibility of Developing Deposits of Phosphorites in the Outer Continental Shelf and Exclusive Economic Zone (OCS/EEZ); Offshore North Carolina

AGENCY: Minerals Management Service, Interior.

ACTION: Notice; Request for Comments and announcement of public meeting.

SUMMARY: The purpose of this Request for Comments (Request) is to obtain information and to solicit public comment on the overall economic feasibility of developing deposits of phosphorites located in Federal waters offshore North Carolina. This request is considered important to ensure that all parties, public and private, have the opportunity to submit data and information pertinent to the marine mineral deposits which exist in these offshore areas.

In addition, the joint State of North Carolina and the Department of the Interior OCS/EEZ Task Force (Task Force) will hold a public meeting to discuss all comments submitted. The public is invited to attend any or all parts of the meeting and submit oral comments at that time.

DATES: Written comments must be hand-delivered or postmarked on or before June 10, 1988. The public meeting of the Task Force will be held at 10 a.m. on June 15, 1988, in Raleigh, North Carolina.

ADDRESSES: Respondents are requested to submit all comments, opinions, data, and information to Mr. Evan Brunson, Task Force Coordinator, Division of Coastal Management, North Carolina NRCD, P.O. Box 27687, Raleigh, North Carolina 27611. A copy of "The Economic Feasibility of Mining Phosphorite Deposits of the Continental Shelf Adjacent to North Carolina" may be obtained from Mr. Brunson at the above address or requested by telephoning (919) 733–2293.

The public meeting of the Task Force will be held at the Archdale Building, located at 19 Salisbury Street, Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: Don Hill, Office of Strategic and International Minerals, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Telephone (703) 285–2220.

SUPPLEMENTARY INFORMATION: The data, informational submittals, and all comments received from all sources will be reviewed and analyzed by the existing Task Force.

Background Information

Subsequent to a formal exchange of letters between Governor James G. Martin and Secretary of the Interior Donald P. Hodel in early 1986, a joint cooperative agreement was signed establishing the Task Force. The Task Force was directed to study the phosphorite deposits located off the coast of North Carolina and to submit its findings upon conclusion of an economic feasibility study.

In late 1986, the Task Force developed a proposal to study the economics of recovering phosphate minerals from the offshore Onslow Bay area, and a contract to conduct an economic feasibility study was awarded after public notice in the **Federal Register** and a Department of the Interior news release.

In November 1987, the contractor, Development Planning and Research Associates, Inc., presented its findings and conclusions to the Task Force in a single volume study entitled "The Economic Feasibility of Mining Phosphorite Deposits of the Continental Shelf Adjacent to North Carolina" (EFS). After review, analysis, and discussion of that study by the Task Force at meetings held in Raleigh, North Carolina, in November 1987 and January 1988, and after a review of the mineral data available on those deposits, the Task Force submitted a report on its findings and recommendations to the Director, Minerals Management Service (MMS), U.S. Department of the Interior. After consultation between the MMS and officials of the North Carolina Department of Natural Resources and Community Development (NRCD), it was agreed to solicit comment from firms, organizations, public groups, and any individuals who may wish to comment on the EFS and on potential marine minerals development offshore North Carolina.

It is noted that during the present phase of data gathering there is no State or Federal action to lease, or offer for public lease sale, any marine minerals in any offshore area contiguous to North Carolina. Further, there are no present plans to prepare any Environmental Impact Statement or evaluation on this area. The current Request comprises only data gathering and solicitation of comment.

As cited in the EFS, that study and current data gathering tasks are being conducted in order to assist the State of North Carolina and the Department of the Interior in reaching a decision regarding whether to proceed with other activities related to mining offshore phosphorites on the OCS/EEZ.

Guidelines

Comments, data, opinions, and any supporting information are specifically requested on the following items:

1. The EFS indicates that current data suggest that approximately 98.9 million metric tons of phosphorite deposits are located offshore North Carolina of which 20.75 million metric tons are inplace concentrates averaging 7.3 percent P205 content. It is further stated that, in the United States, phosphate rock capacity is expected to decline especially if and/or when mines in Florida become depleted.

a. Given the above, please express your opinion on the current phosphate supply within the United States;

b. Given the above, please express your opinion on the current phosphate supply outside the United States which would affect the U.S. economy as presently imported into this country and therefore affect aggregate phosphate supplies; and

c. Given the above, please express your opinion on demand for phosphate within the United States both now and within the coming 5- and 10-year period.

2. In the EFS, certain economic assumptions were made concerning the future feasibility of mining offshore phosphate deposits. Given that current estimates indicate sufficient phosphate resources for a substantial reserve offshore, please express your opinion on the following economic assumptions. If you believe these assumptions are unrealistic or too optimistic, please give your opinion on future 5- and 10-year phosphate rock prices; estimated date(s) for startup; and necessary rates of return that would be required. Also express your opinion on the overall economic feasibility of undertaking extraction of marine phosphate within this century.

a. An optimistic mining scenario projects that the world price of phosphate rock, adjusted for inflation, will rise to around $27 per ton by 1992 and ½ of 1 percent per year thereafter in real dollars; and

b. At a minimum, a real after-tax internal rate of return of 8 to 9 percent (exclusive of inflation) for an offshore phosphate mining operation could provide an acceptable profit margin to justify necessary capital investment for offshore recovery.

3. The EFS stated that one assumption necessary for the analysis was that the sand and clay wastes generated from the beneficiation of the phosphate could be disposed of at sea, or alternatively on

a landsite. Please express your opinion on both ocean and landsite disposal of sand and clay wastes after beneficiation, including the costs attendant thereto.

4. Please provide any additional comments which you feel should be taken into account by the Task Force, including (but not limited to):

a. Current and projected phosphate mineral resource market data;

b. Current and projected technology available for phosphate mineral extraction, either offshore or onshore;

c. Specific geological, environmental, biological, and/or socioeconomic conditions which may affect (either positively or adversely) marine mineral extraction of phosphates offshore North Carolina; and

d. The overall economic feasibility of offshore mining of marine phosphates.

Dated: May 5, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 88-10564 Filed 5-10-88; 8:45 am]

BILLING CODE 4310-MR-M

Federal Register

Wednesday
May 11, 1988

Part V

The President

Proclamation 5816—National Maritime Day, 1988

Proclamation 5817—National Fishing Week, 1988

Federal Register
Vol. 53, No. 91
Wednesday, May 11, 1988

Presidential Documents

Title 3—

The President

Proclamation 5816 of May 9, 1988

National Maritime Day, 1988

By the President of the United States of America

A Proclamation

National Maritime Day reminds us that the American merchant marine has always been essential to our national security and economic growth—and reminds us as well that the men and women of the merchant marine deserve our gratitude every day. The importance of the merchant marine to our national defense was never more clear than in World War II, when, at a cost of more than 6,000 lives and with the loss of 733 ships, the American merchant marine never faltered in delivering cargo for our Armed Forces throughout the world. Earlier this year, these merchant seafarers received veteran status for their valiant service.

Today, the merchant marine continues its roles in trade and defense—and the sailors of our commercial fleets continue to exhibit the patriotism and the many skills that have ever characterized them and their predecessors. It is truly fitting that we pause to salute these seafarers and all other Americans who support them and guard the lifelines of the sea that sustain us all.

In recognition of the importance of the merchant marine, the Congress, by joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and authorized and requested the President to issue annually a proclamation calling for its appropriate observance. This date was chosen to commemorate the day in 1819 when SS SAVANNAH left Savannah, Georgia, on the first transatlantic steamship voyage.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 22, 1988, as National Maritime Day. I urge the people of the United States to observe this day by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10683
Filed 5-10-88; 10:54 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5817 of May 9, 1988

National Fishing Week, 1988

By the President of the United States of America

A Proclamation

This year we again observe a period of special recognition for the place of fishing, both commercial and recreational, in American life. The lore of fishing is, of course, part of American tradition, from Huck Finn to Ernest Hemingway's Nick Adams. Today fishing continues to provide enjoyment for some 60 million American sport fishermen and women and to enhance our economy in many ways.

Our natural resources offer us some of the world's most bountiful fishing. Commercial fishing supplies us with a tremendous amount of food and other products, and recreational fishing contributes some $25 billion to our economy each year and employs some 600,000 people. Fishermen know firsthand the joys of fishing—it is an ideal family activity, for instance—and realize the need for careful stewardship of our sport and commercial fishery resources. The private sector works closely with government at the Federal, State, and local levels to fund fishery conservation restoration projects throughout the States and Territories.

Fishing's countless additions to our economy, our way of life, and our attitude toward our natural resources are all excellent reasons for the American people to celebrate National Fishing Week in a spirit of appreciation for the hardworking members of the commercial and recreational fishing industries and of the place of fishing in our national history and heritage.

The Congress, by Senate Joint Resolution 190, has designated the week of June 6 through June 12, 1988, as "National Fishing Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 6 through June 12, 1988, as National Fishing Week. I call upon the people of the United States and government officials to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10684
Filed 5-10-88; 10:55 am]
Billing code 3195-01-M

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H.J. Res. 508/Pub. L. 100-310

Designating May 1988 as "Older Americans Month." (May 6, 1988; 102 Stat. 459; 1 page) Price: $1.00

H.J. Res. 541/Pub. L. 100-311

Commending the State of Israel and its people on the occasion of the fortieth anniversary of the reestablishment of the independent State of Israel. (May 6, 1988; 102 Stat. 460; 2 pages) Price: $1.00

S.J. Res. 190/Pub. L. 100-312

To authorize and request the President to issue a proclamation designating June 6-12, 1988, as "National Fishing Week." (May 6, 1988; 102 Stat. 462; 1 page) Price: $1.00