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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, and 277

(F.R. mdt. No. 307)

Food Stamp Program: Systematic Alien Verification for Entitlements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Pub. L. 99-603, requires the Immigration and Naturalization Service (INS) to implement a system for the verification of immigration status of aliens applying for certain types of benefits, including food stamps. The system established by INS is known as the Systematic Alien Verification for Entitlements (SAVE) Program, and is an inter-agency, Federal/State initiative intended to prevent the issuance of benefits to illegal aliens or aliens otherwise not entitled to benefits because of immigration status. Implementation of SAVE is required by IRCA by October 1, 1988, for all affected entitlement programs. The statute provides for 100 percent Federal funding of the costs incurred by State agencies in implementing and operating SAVE.

This rule establishes the procedures which State agencies must use to implement and operate the SAVE Program and specifies the provisions for Federal reimbursement of SAVE expenditures. This rule also implements one nondiscretionary provision from IRCA which requires all household members to attest to their citizenship or alien status under penalty of perjury, and three nondiscretionary provisions which pertain to verification of alien status. These three nondiscretionary provisions address the sources of

documentation the State agencies must accept as verification of alien status and the transmission of non-INS documents to INS for reverification.

DATES: This rulemaking is effective October 7, 1988. Comments must be received on or before January 5, 1989, to be assured of consideration.

ADDRESSES: Comments should be addressed to Thomas O'Connor, Director, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 904.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756-3490.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The rule will affect the economy by less than \$100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified this action as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Interim Rule

Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has

determined pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable and contrary to public interest. These rules are being published in interim form in order to provide State agencies with the regulatory authority and guidelines necessary to participate in the SAVE Program on an optional basis, as required by section 121(c) of Pub. L. 99-603, prior to the mandatory implementation date of October 1, 1988. However, because the Department believes that the rule may be improved by public comment, comments are solicited on this rule for 60 days.

Likewise, because State agencies have had the option under Pub. L. 99-603 to utilize SAVE and avail themselves of funding authorized for that system since October 1, 1987, good cause is found pursuant to 5 U.S.C. 553(d) for making this rule effective less than 30 days after publication.

Comments on this interim rule will be considered in a final SAVE rule.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and the State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

The information collection requirement contained in this rulemaking in § 273.2(b), which requires an individual applying for benefits to declare in writing, under penalty of perjury, whether he or she is a citizen of the United States or an alien in eligible immigration status has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB No. 0584-0064. The remaining provisions of this interim rule do not contain new or additional reporting or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

General

The Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. 99-603) was enacted on November 6, 1986. Section 121 of the statute, entitled "Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs", includes numerous provisions which will affect the Food Stamp Program's current procedures relating to verification of alien status.

The statute provides for the establishment of a system by which agencies can verify the actual immigration status of aliens applying for benefits with the Immigration and Naturalization Service (INS). The intent of this provision is to strengthen the integrity of certain benefit programs which require that an individual be a U.S. citizen or in a specified immigration status in order to be eligible for program benefits.

INS has been charged with the responsibility to develop and make available a system which permits verification of immigration status by the agencies administering the affected programs, and which protects the individual's privacy to the maximum degree possible. The Systematic Alien Verification for Entitlements (SAVE) Program has been established by INS to provide these agencies with information for central data files, including both automated and paper records, which are maintained by INS to document the immigration status of aliens.

Under section 121(c) of IRCA, the Departments of Agriculture (Food Stamp Program), Health and Human Services (Aid to Families with Dependent Children and Medicaid Programs), Labor (Unemployment Compensation), Education (Title IV Educational Assistance), and Housing and Urban Development (Housing Assistance), as well as certain Territorial Assistance Programs, must participate or require State agencies which administer their programs to participate in the SAVE Program by October 1, 1988.

Section 121(c)(5) of IRCA provides INS with the funding necessary to establish and maintain the SAVE Program. In addition, the affected Departments are authorized by section 121(b) to provide their administering agencies with 100 percent Federal funding of the costs incurred in the implementation and operation of the SAVE Program.

The second provision from IRCA which will affect the Food Stamp Program is a nondiscretionary eligibility provision which revises the application process. The provision requires all

applicant household members to declare in writing, under penalty of perjury, their citizenship or alien status.

Finally, this rulemaking implements two other nondiscretionary provisions of IRCA. These provisions expand the sources of verification a State agency may accept when verifying an applicant alien's immigration status.

Waivers of SAVE

Section 121(c)(4) of IRCA provides for an assessment of the cost-effectiveness of SAVE for the affected programs, and for authority to waive the mandatory implementation requirements under certain circumstances. Section 121(c)(4)(A) of IRCA required each Secretary to report to Congress by April 1, 1988, concerning whether (and the extent to which) the SAVE Program is cost-effective and appropriate for the affected program. A waiver may be granted if the Secretary or an administering agency has in effect an alternative system of immigration status verification which is as effective and timely as SAVE and provides for the appropriate hearing and appeals rights for beneficiaries, or if the costs of administration of the SAVE Program exceed the estimated savings. For the Food Stamp Program, this means that either the entire Program, or the Program as administered by individual State or local agencies may qualify for a waiver of the mandatory implementation requirements. The Department conducted a study of the costs and effectiveness of SAVE (a copy of which was distributed to all State agencies on April 22, 1988) and reported to Congress on April 1, 1988 that implementation will be required on October 1, 1988, and that State agencies will be allowed to apply for waivers. Separately from this rule, the Department is providing State agencies any necessary guidance on procedures for applying for such waivers and discussion of criteria for their approval.

Systematic Alien Verification for Entitlements (SAVE)

Introduction

Section 6(f) of the Food Stamp Act of 1977, as amended, defines the citizenship and alien status requirements for participation in the Food Stamp Program. Under the current regulations at 7 CFR 273.2(f)(1)(ii), an individual applying for benefits who is not a citizen of the United States must provide acceptable documentation which verifies that he or she is in an eligible alien category. While the Food Stamp Program previously established both eligibility criteria and

documentation requirements pertaining to citizenship and alien status, the SAVE Program provides the opportunity to further verify the validity of the documentation of alien status presented by alien applicants by comparing the claimed immigration status with current immigration status records maintained by INS. Thus, SAVE is not intended to substantiate an applicant's statement regarding alien status in lieu of the presentation of documentation, nor is it intended to shift the responsibility for initially establishing eligible alien status from the applicant to the State agency. SAVE is a reverification of documented alien status against the current automated and/or paper files maintained by INS, which confirms the veracity of the alien status established during application processing.

The SAVE Program—§ 272.11

The SAVE Program is a two-level verification system. Documented alien status may be verified either through automated access to INS computer records, or by manually transmitting photocopies of documentation to INS for review and comparison with INS files. As described in its publication of September 8, 1987, at 52 FR 33882, INS, or its contractor-representative, will maintain a centralized automated database, known as the Alien Status Verification Index (ASVI), which will be made available to the affected agencies on an inquiry-only basis.

Today's publication requires State agencies, unless a waiver has been approved by FNS, to establish automated access systems to enable them to query the database, either on-line or in batch mode, regarding the current immigration status of alien Food Stamp Program applicants. It is intended that most SAVE verifications be handled through the automated access methods, whenever possible, in order to facilitate application processing and minimize the costs and paperwork associated with manual handling of verification requests. However, it is anticipated that, in some cases, State agencies may be unable to verify documented alien status through automated access for the following reasons:

1. The State agency is unable to access the ASVI database;
2. The alien is in a category which is not recorded in the INS computerized file;
3. The State agency has determined that the documentation presented by the alien is questionable;
4. There is a material discrepancy in the records which requires resolution; or

5. No record is found for the alien applicant.

Therefore, INS has established the secondary verification procedure, whereby the State agency will submit a photocopy of their documentation presented by the alien applicant to the INS for further review. The document will be examined by an INS Status Verifier, who will search other INS databases for computerized records of immigration status which may not have been included on the ASVI database. If necessary, the paper file containing the alien's records (the "A"-file) will be retrieved and reviewed by the Status Verifier. A determination of immigration status will be made, and the State agency will be advised on INS' findings. The secondary verification procedure will be accomplished through the completion and transmittal of INS Form G-845, Document Verification Request, and it is anticipated that the procedure will require a maximum processing time of twenty-one days.

In order to prevent the erroneous denial or termination of benefits on the basis of alien status, section 121(a) of IRCA provides that no negative action may be taken by State agencies on the basis of automated verification only. If the State agency uses automated access to the ASVI in SAVE verification, and is unable to validate the alien's documented status through this method, the secondary verification procedure must be completed before the determination of ineligible alien status may be considered final. This situation may occur when the automated access locates a record which is discrepant with the documentation produced, or when no record is located, resulting in the message "Institute Secondary Verification."

A new § 272.11 has been added to the regulations, which describes the SAVE Program, the methods of automated and secondary verification, and the requirements for State participation in SAVE.

Automated Access to the ASVI—§ 272.11(d)

State agencies participating in the SAVE Program must establish a system by which State, district or local staff are able to process most SAVE verifications through direct inquiry to the ASVI database. INS, or its contractor, will maintain the central index of alien data and will authorize access to this information, either through on-line communication with its system or through periodic file matches. Since the ASVI file search is conducted on the basis of the alien file or registration number issued by INS, the State agency

must ensure that its records include this data element in order to accomplish verification through file match.

For State agencies planning to verify documented alien status through on-line inquiry to the ASVI database, INS will provide a national communications network to support automated access through various methods. Access methods may include dedicated lines to the INS computer facility, dial-up access using modems and microcomputers or terminals, or "point-of-sale" card readers similar to those used by merchants to verify credit card spending limits. Access may also be provided through touch-tone or pulse dial telephones, in which a computerized voice response will return data from the ASVI file after authorization and alien number data have been entered.

If a record is found on the ASVI, the response received will include the current alien status recorded on the INS database, as well as certain identifying information about the individual. For each inquiry to the ASVI database through any of the automated access methods, the INS system will assign a unique inquiry number known as the ASVI Query Verification Number, which will also be provided to the inquiring agency as part of the system response.

Plan of Operations—§§ 272.2(d)(1)(vii) and 272.11(e)

Under this rule, State agencies are required to describe the procedures to be used in operating SAVE in attachments (or an amendment) to their Plans of Operation. The SAVE plan must include a narrative description of procedures and access methods, any agreements which the State agency is required to execute to implement SAVE, a statement of projected costs for SAVE implementation and operation, and any requests for prior approval of equipment or supply purchases as required by Part 277. This information is necessary for the Department to assess the cost-effectiveness of SAVE implementation and particular access methods, and to ensure conformance to applicable Program regulations. The State agency may not implement SAVE and may not claim reimbursement at the 100 percent level for expenditures related to SAVE without prior FNS approval of its plan.

This rule requires that the statement of projected costs for SAVE implementation and operation be included as part of the normal budget submittal process, as required by current regulations at 7 CFR 272.2(c)(1)(i). As part of the Plan of Operations, the State agency must submit an annual Budget Projection Statement (FNA-366A), which must be

updated as necessary throughout the year. A narrative justification, which explains the assumptions used to arrive at the projections, is also required by current rules. This is the same procedure to be used in documenting and obtaining approval for estimated SAVE costs. Since SAVE costs are eligible for 100 percent Federal funding, the Department is reserving the right to approve all expenditures for ADP equipment and supplies in advance of purchase, at least until such time as the cost-effectiveness of the SAVE Program and the relative costs of various access methods have been determined.

Title 7 CFR 272.2(d)(1) is amended to add a new paragraph (vii), specifying the requirement that a SAVE plan be submitted by State agencies participating in the program. The information to be included in the plan is outlined in a new § 272.11(e).

Disclosure—§§ 272.1(c)(1) and 272.11(c)

Section 121(a)(1) of IRCA specifies that INS must ensure that the immigration status verification system established "protects the individual's privacy to the maximum degree possible." In addition, State agencies are limited by section 11(e)(8) of the Food Stamp Act (7 U.S.C. 2020(e)(8)) to releasing casefile data in limited circumstances, only to prescribed individuals or organizations.

Automated access to the ASVI database will be restricted and tracked by the INS system. An authorization code will be issued to authorized system users, and an automated audit trail file will be created, which records the user's code, date and time of access, and the system response, including both the alien status and the ASVI Query Verification Number.

Because use of SAVE requires the release of identifying information about alien applicants from State agency records, the disclosure provisions of 7 CFR 272.1(c)(1) have been revised to allow for the release of such information for the purpose of SAVE verification. Consistent with section 11(e)(8) of the Food Stamp Act (7 U.S.C. 2020(e)(8)), State agencies must also provide for safeguards to ensure the protection of this information, and must execute appropriate agreements with INS (and its contractors or agents) regarding data security and limitations on disclosure.

Section 121(c)(1) of IRCA specifically precludes INS from using the SAVE Program for " * * * administrative (non-criminal) immigration enforcement purposes * * *". The State agencies participating in the SAVE Program under the authority of this rulemaking

may only use the information obtained through SAVE for the purposes of administering and determining eligibility for the Food Stamp Program.

Accordingly, 7 CFR Part 272 is amended by adding a new § 272.11(c) which specifies the uses which may be made of this information.

Agreements—§ 272.11(b)

State agencies participating in the SAVE Program will be required to execute an agreement with INS prior to implementing SAVE. A new § 272.11(b) specifies the information necessary to document the arrangements that State agencies have made with INS to provide and obtain data through the SAVE Program. This information includes the identification of access points and locations covered by the agreement, the positions of agency officials authorized to request or provide SAVE data, appropriate disclosure limitations and billing agreements. The Department believes that this information must be clearly set forth among the parties participating in the SAVE process in order to ensure that the Program operates efficiently, that the data is properly safeguarded, and that any reimbursement of costs is appropriate.

Written Consent

Current rules at 7 CFR 273.2(f)(1)(ii) identify the requirements the State agency must complete when applicant aliens do not provide documentation adequate to verify their eligible alien status. Specifically, this section requires the State agency to advise the applicants that they may be determined eligible if acceptable documentation is provided and that the applicants may contact INS on their own or request that the State agency contact INS on their behalf. In order to contact INS on the applicant's behalf, however, the State agency must receive the applicant's written consent.

On May 11, 1987 the Department published regulations (52 FR 17580) which proposed to broaden current food stamp regulations that preclude State agencies from contacting the INS to obtain information about an applicant's alien status without the applicant's written consent. The proposal was made to give State agencies more flexibility to verify alien documentation through use of the SAVE Program or any other system which protects the individual's privacy to the maximum degree possible. At this time, the Department is not prepared to finalize the proposed rulemaking. However, under Section 11(e)(8) of the FSA, the disclosure of information obtained from applicant households is limited to persons directly

connected with the administration or enforcement of the provisions of the FSA. The IRCA provisions affect section 11(e)(8) of the FSA in that, when a State agency uses the SAVE Program to validate alien documents of a Food Stamp Program applicant, the INS becomes one of the agencies directly connected by law with the administration of the FSA. Thus, for the purpose of this rule, the State agency no longer must receive an applicant's consent to contact INS in order to verify the validity of alien documentation through the SAVE Program. This revision therefore amends the current rules governing written consent to allow the State agency to implement the SAVE provisions as specified under IRCA. The broader changes to written consent proposed in the May 11, 1987 rule will be dealt with at a later time.

Accordingly, a newly added § 273.2(f)(10), which is discussed later in this preamble in the section entitled "Certification Procedures and Save", specifies that an applicant's written consent is not required when the State agency is using SAVE.

Notification

Under Section 11(e)(2) of the FSA and 7 CFR 273.2(b) of the current rules, each application must contain a statement that advises the applicant that information provided by the applicant in connection with the application for coupon allotment is subject to verification by Federal, State and local officials to determine if the information is factual. However, the Social Security Act, which is amended by section 121(a)(1) of the IRCA, requires that applicants for and recipients of benefits from programs that are required to operate the SAVE Program be notified of the use which the State agency will make of the information received. The Department has determined that the requirement for adequate notification is met by adding a statement on the application form which advises the applicant household that the alien status of each alien household member may be subject to verification with INS, and that such verification will require the disclosure of certain information from the application form to INS. The statement will also inform applicants that information received from INS may affect their eligibility and benefit level.

Accordingly, this rulemaking amends 7 CFR 273.2(b) to require that all applicants be notified on the application form that information or documentation provided to verify their alien status may be validated by INS and that the information received from INS may affect their eligibility or benefits. The

Department has also revised the Application for Food Stamps, Form FNS-385, to include this statement.

Certification Procedures and SAVE—§ 273.2(f)(10)

Section 121(a)(1) of IRCA requires that the State agency meet certain standards when certifying applicant aliens. These standards require that: (1) State agencies allow households a reasonable opportunity to submit acceptable documentation prior to taking any action to deny, delay, reduce or terminate the alien's eligibility or benefit level on the basis of an applicant's immigration status; (2) the State agency's verification of documentation through SAVE not result in a delay, denial, or reduction of program benefits; and (3) households be afforded the right to a fair hearing. A new § 273.2(f)(10) is added by this interim rule which identifies the certification procedures a State agency must follow to operate the SAVE Program. In addition, IRCA section 121(a)(1) requires that a State agency not be liable to the Department for errors resulting from the proper use of the SAVE Program. Consequently, this limitation of liability requires procedures to document the State agency's proper use of SAVE. These requirements are discussed in further detail below.

In regard to the first requirement, section 121(a) of IRCA requires State agencies to provide applicant aliens a reasonable opportunity to submit documentary evidence indicating eligible alien status prior to taking any action to deny, delay, reduce, or terminate the alien's eligibility or benefit level. Thus, aliens who do not have a source of documentation or who present a document which the eligibility worker determines is questionable must be provided with a reasonable opportunity to present acceptable documentation. The current food stamp regulations at 7 CFR 273.2(h)(1)(i)(C) already specify what constitutes a reasonable opportunity to obtain acceptable documentation for certification. Specifically, this section of the current regulations states that " * * * sufficient time shall be at least 10 days from the date of the State agency's request for the particular verification * * *". Consequently, requests for an alien's acceptable documentation of alien status shall be handled in accordance with 7 CFR 273.2(h)(1)(i)(C). The Department is particularly interested in receiving comments on this definition of reasonable opportunity.

In order to provide the reasonable opportunity prior to taking any action to

deny, delay, reduce or terminate the alien's eligibility or benefit level, the State agency is responsible for ensuring that households are provided with a reasonable opportunity to submit documentary evidence prior to the 30th day following the date of application. Applicants who have been provided with a reasonable opportunity to provide acceptable documentation and do not do so as of the 30th day following the date of application shall not be certified for benefits until the household submits acceptable documentation. However, if the household's 10-day reasonable opportunity period has not ended as of the 30th day following the date of application, and the household is otherwise eligible, the State agency must provide benefits no later than 30 days following the date of application. This meets the requirements of section 121(a)(1) of the IRCA which specifies that benefits cannot be delayed on the basis of an applicant's alien status before the applicant has had a reasonable opportunity to submit documentation.

This rule also amends 7 CFR 273.2(f)(1)(ii)(F) and 273.2(h)(3)(i) to conform to the IRCA provisions pertaining to reasonable opportunity. These changes are necessary because section 121(a)(1) of the IRCA does not permit the State agency to deny benefits on the basis of an applicant's eligible alien status or pend an application when the State agency has not provided the alien applicant with a reasonable opportunity to submit documentation.

In regard to the second requirement, IRCA provides that Program benefits cannot be delayed, denied, or reduced on the basis of an applicant's immigration status pending verification of an alien's document through SAVE. In other words, once the alien submits acceptable documentation and the SAVE Program has been accessed, use of the SAVE Program cannot delay benefits to the household if otherwise eligible. The State agency therefore shall process the application within normal processing standards as specified in 7 CFR 273.2(g) or, if appropriate, the expedited service processing standard as specified in 7 CFR 273.2(i) of the current regulations.

If the State agency is unable to verify the validity of the alien's documentation through the automated system, or a significant discrepancy exists between information provided by the alien and information provided by any of the ASVI data elements, the State agency shall institute secondary verification and submit to INS the INS Form G-845, with an attached photocopy of the

alien's document. As previously explained, the automated access to the ASVI database can confirm an alien's status but cannot refute it. Refutation of alien status can only be accomplished on the basis of secondary verification, i.e., the submittal of INS Form G-845. A contradictory response from the ASVI verification or an absence of information on the ASVI does not necessarily mean that an alien's documentation is not valid, since the ASVI database may not be accurate or complete. The final determination of a document's validity can only be resolved in the secondary verification stage.

In regard to the third requirement, newly added § 273.2(f)(10) also specifies that if, after a State agency has followed the procedures outlined in this section, an alien is determined not to be in a status which makes him/her eligible for food stamp benefits, the State agency must take action, including proper notices to the household, to terminate, deny or reduce benefits. Households will be provided an opportunity to request a fair hearing under the current provisions of § 273.15 prior to any adverse action by State agency.

Furthermore, as previously mentioned, section 121(a)(1) of IRCA requires that the State agency not be liable to the Department for errors resulting from the proper use of the SAVE Program. In order for the Department to exclude such errors appropriately, this rulemaking requires the eligibility worker to document the use of SAVE. Therefore newly added § 273.2(f)(10) requires that, while waiting for the SAVE response, State agency records must contain either a notation showing the date of the State Agency's transmission (automated access) or a copy of the INS Form G-845 (secondary verification). Once a SAVE response is received, State agency records must document the ASVI Query Verification Number (automated access) or contain a copy of the INS-annotated Form G-845 (secondary verification). When the automated access to the ASVI results in the initiation of secondary verification, State agency records must document the ASVI Query Verification Number and contain a copy of the INS Form G-845.

Finally, as mentioned in the section entitled "Written Consent", newly added § 273.2(f)(10) specifies that an applicant's written consent is not required when the State agency is verifying the validity of documentation through the SAVE Program.

Food Stamp Application—§ 273.2(b)

As previously mentioned, IRCA includes a provision which will affect

the application process for all Food Stamp Program applicants. Specifically, section 121(a) of IRCA, which amends section 1137 of the Social Security Act, states:

The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing by the individual (or in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

The Department has interpreted section 121(a) to require that whenever the State agency implements SAVE, the perjury statements pertaining to an applicant's citizenship or alien status must be in place.

Accordingly, this rule amends 7 CFR 273.2(b) to require that the application include a statement to be signed by each household member attesting, under penalty of perjury, to their citizenship or alien status. Adults shall sign the statement for household members under 18 years of age. If there are no adult members present in the household, this rule specifies that the applicant may sign the statement for him or herself and for all other non-adults in the household. The Food Stamp Application (Form 385) has been amended to include a statement to be signed by each household member attesting to his or her citizenship or alien status.

In addition, as a result of the above amendment to the Social Security Act, each applicant household member's signature attesting to his or her citizenship or alien status is required as a condition of eligibility. Thus, any household member who fails to sign this statement must be treated as a nonhousehold member. Current rules at 7 CFR 273.11(c) prescribe the procedures to follow when determining how to treat the income and resources of nonhousehold members. The procedures differ depending on the reason the individual is excluded as a nonhousehold member. Under these procedures, the State agency must either: (1) Count the income and resources of the nonhousehold member who is ineligible for international Program violation or workfare sanction; (2) count the entire resources and a share of the income of the nonhousehold member who is an ineligible alien or is ineligible for refusal to provide a Social Security Number (SSN); or (3) exclude the income and resources of all other nonhousehold members.

It is the Department's opinion that the requirement to sign the application to attest to citizenship or alien status corresponds to the requirement to provide an SSN and consequently should be handled in the same manner.

Accordingly, this rule amends 7 CFR 273.1(b)(2) to specify that an applicant who fails to sign the application attesting to his or her citizenship or alien status is a nonhousehold member. Sections 273.2(b) and 273.11(c) of 7 CFR are amended to specify the treatment of the nonhousehold member's income and resources when determining the eligibility and benefit level of the remaining household members.

Alien Verification—§ 273.2(f)(1)(ii)

Current rules at 7 CFR 273.2(f)(1)(ii) specify that State agencies must determine if aliens are an eligible alien status in accordance with 7 CFR 273.4(a) by requiring that the household present documentation for each alien applicant. Current rules at 7 CFR 273.2(f)(1)(ii)(B) and 273.2(f)(1)(ii)(C) further require that applicant aliens provide INS documentation that verifies eligible alien status. The INS documentation usually required is: (1) INS Form I-551; (2) INS Form I-151; or (3) INS Form I-94, which is annotated either with section 207, 208, 212(d)(5) or 243(h) of the Immigration and Nationality Act or the term refugee, parolee, paroled or asylum. If the proper INS documentation is not available, the alien may state the reason and submit other conclusive documentation. Unless questionable, the State agency must accept the documentation.

IRCA contains three provisions which affect the current alien verification requirements in the Food Stamp Program. The first provision under section 121(a) of IRCA which amends section 1137(d)(2) of the Social Security Act, reads as follows:

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

As a result of this provision, the State agency must verify alien status through either INS documentation or other documents the State agency determines are reasonable evidence of immigration status. This rule provides that reasonable evidence of immigration status is any document which reflects an

applicant's eligible alien status. This provision alters the current verification procedures to allow the State agencies to accept, without restriction, documentation which is not issued through the INS.

Accordingly, this rule amends 7 CFR 273.2(f)(1)(ii)(B) and 273.2(f)(1)(ii)(C) to reflect the sources of documentation the State agency may accept when verifying alien status. This rule also deletes 7 CFR 273.2(f)(1)(ii)(F), which allowed the State agency to accept other documents only when INS documentation was not available. Because the State agency is no longer required to accept INS documentation before accepting other sources of documentation, this provision is no longer applicable.

In a second provision affecting the alien verification requirements of the Food Stamp Program, IRCA requires State agencies which accept documentation which is not issued through INS to photocopy and transmit the documents to INS for verification. Pending such verification, the State agency may not delay, deny, reduce or terminate the individuals' eligibility for Program benefits on the basis of the individuals' immigration status. The State agency does not need to receive the alien's written consent in order to submit a photocopy to INS for verification. As previously explained in the section of this preamble entitled "Written Consent," an applicant's written consent is not required when the INS becomes an agency connected with the administration or enforcement of the provisions of the FSA. Written consent is therefore no longer required in these circumstances because the IRCA provisions require the transmission of the photocopy to INS.

Accordingly, 7 CFR 273.2(f)(1)(ii)(E) is amended to specify the INS verification procedures a State agency must complete when accepting sources of non-INS documents which the State agency determines are reasonable evidence of the applicant alien's immigration status for food stamp purposes.

Finally, as previously discussed under the section entitled, "Certification Procedures and SAVE", section 121(a)(1) of the IRCA requires that the State agency provide alien applicants with a reasonable opportunity to submit documentary evidence indicating their eligible alien status prior to taking any action to deny, delay, reduce or terminate the alien's eligibility or benefit level. This provision applies to all alien applicants regardless of when the State agency implements the SAVE program. Current rules define a reasonable opportunity to provide verification as at

least 10 days from the date of the State agency's request for an acceptable document. If the reasonable opportunity period provided to the household has not expired as of the 30th day following the date of application, and the household is otherwise eligible, the State agency must provide benefits no later than 30 days following the date of application.

Accordingly, this rule replaces 7 CFR 273.2(f)(1)(ii)(F) with the provisions reflecting the State agency's responsibility to provide a reasonable opportunity prior to taking any action to deny, delay, reduce or terminate the alien applicant's benefit level.

Quality Control—§§ 275.12(d)(2)(vi) and 275.13(c)(2)

General Description of Excluded Variances

Section 121(a) of IRCA states that a State agency is not liable for any losses from any error in the State agency's determination of eligibility for benefits based on SAVE data related to citizenship or immigration status:

(1) If the State agency has provided such eligibility based on a verification of satisfactory immigration status by INS;

(2) Because the State agency was required to provide a reasonable opportunity to submit documentation;

(3) Because the State agency was required to wait for the response of INS to the State agency's request for official verification of the validity of documentation; or

(4) Because of a fair hearing process.

Under the Department's Quality Control rules, a variance is the incorrect application of policy and/or a deviation between the information that was used to authorize the sample month's issuance and the information that should have been used. In the case of alien status, a variance occurs if the State agency certifies an ineligible alien or fails to certify an eligible alien. In Quality Control (QC), the Department will implement the IRCA limitations on State agency liability by excluding variances in two situations. In two other situations, exclusion of variances is not necessary. All situations are described below.

Provisions Not Requiring Excluded Variances

Pursuant to IRCA, State agencies are not liable for Good Stamp Program losses to the Department in two ways related to SAVE, either of which require amending regulation. QC does not review cases which are covered by these provisions. However, the

Department does wish to call the public's attention to these provisions.

First, as required by section 121(a) of IRCA, a State agency will not be liable for losses if it continues benefits while a fair hearing concerning alien status verified by SAVE is pending. Such a fair hearing would occur, in accordance with 7 CFR 273.15, if a State agency terminated a household's participation (or reduced its allotment) because of information provided by SAVE. Under current rules at 7 CFR 275.11(f)(1)(iv), QC does not review the accuracy of continued benefits pending a fair hearing, therefore the State agency would not be liable for such benefits.

Second, a State agency would not be liable for benefits paid to the household during the reasonable period granted the household to provide documentation of alien status. As discussed previously in this preamble, current rules at 7 CFR 273.2(h)(1)(i)(C) require the State agency to allow sufficient time (at least ten days) for the applicant to submit requested verification. While the household is being given this opportunity to submit documentation, QC will not review the pending case, because the household will not be participating in the Program during this period unless it is processed under expedited service procedures. Errors from postponed verification of an element of eligibility as allowed under expedited service procedures, including alien status, are excluded from the error analysis.

Two Excluded Variances

The first variance which QC must exclude under the terms of IRCA is one caused by erroneous INS verification through SAVE. That is, if INS, through SAVE, validates as correct invalid documentation and the State agency certifies the member, QC will, under this rule, exclude the variance in active reviews. This provision is addressed in a new paragraph § 275.12(D)(2)(vi)(A).

While IRCA only addresses the issue of certifying an ineligible alien, the Department is also concerned with the issue of failing to certify an eligible alien. This could occur if the State agency requested verification through SAVE and INS erroneously reported that an alien's document was invalid. Under the terms of this rule in new paragraph § 275.13(c)(2), the State agency will not be liable to the Department in this situation, and QC will exclude the variance in active and negative reviews.

The second variance which QC will exclude under this rule is one caused by the delay between the State agency's request for verification through SAVE

and INS' response to the State agency. For example, an alien may apply for food stamps and produce unquestioned documentation of eligible alien status. The State agency would certify the alien and request verification through SAVE. Three weeks later, after receiving Form G-845, INS may inform the State agency that the alien's document is invalid. QC will, under this rule, exclude such a variance in active reviews. This provision is addressed in a new paragraph § 275.12(d)(2)(vi)(B).

Conditions on Excluding These Variances

QC will exclude the variances discussed above only if the following conditions are met.

The first condition is that the State agency must have correctly used SAVE. In a case where a variance results from erroneous information, INS must have provided the State agency with the erroneous information through SAVE, in response to the State agency's accurate submission of information and documents. In the case of a variance which occurs while awaiting a response from INS, the State agency must have accurately submitted information or documents to INS.

The second condition is that the State agency must provide the QC reviewer with documentation that the State agency used SAVE in the subject case. The Department will not presume that the State agency always uses SAVE to verify eligible alien status. In the case of erroneous information provided by INS, the State agency must provide the QC reviewer with either the ASVI Query Verification Number (for automated access) or the INS-annotated Form G-845 (for secondary verification). If the State agency does not make these items available to the reviewer, QC will not exclude the variance.

In the case of a variance which occurs while awaiting a response from INS, the State agency must provide the reviewer with a copy of Form G-845 which the State agency sent to INS. If the State agency is waiting for INS to respond through the automated system, the casefile must contain a notation showing the date of the State agency's transmission to INS in order to exclude the variance. One example of acceptable notation would be "05-08-87; input Mr. Doe's number into ASVI today; waiting for response." If there is evidence that INS did respond to the State agency, but for some reason the eligibility worker was not informed, QC will not exclude the variance.

It should be noted that variances other than those associated with the use of SAVE could occur in a case along

with variances associated with the use of SAVE. Only those variances that are associated with the use of SAVE may be excluded. All other variances continue to be treated under current rules. For example, QC may uncover unreported income from a certified alien whose status was incorrectly verified by SAVE. In such a circumstance, the variance related to income would be counted but the variance related to the aliens incorrect status would not.

Funding of SAVE Activities—§ 277.19

Section 16 of the Food Stamp Act of 1977 was amended by section 121(b)(5) of IRCA to include the following provision:

(h) The Secretary is authorized to pay to each State agency an amount equal to 100 percent of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.

Accordingly, a new § 277.19 has been added to establish the standards and procedures for claiming costs at the 100 percent Federal Financial Participation (FFP) rate. All allowable direct and indirect costs for equipment, supplies, fees, personnel and other charges are reimbursable at the 100 percent rate. However, such costs must be incurred specifically in the implementation and operation of the SAVE Program. Routine certification and verification activities, including those to obtain documentation of alien status in accordance with the mandatory verification requirements set forth in current regulations, continue to be funded at the 50 percent FFP rate. Costs for fair hearings based on determinations of alien status, whether or not such determinations resulted from participation in the SAVE Program, continue to be funded at the 50 percent FFP rate.

Anticipated costs must be documented in the State agency's budget submittal and must be approved by the Department prior to claiming reimbursement for these costs. In addition, the acquisition of ADP equipment to establish automated access to the ASVI, or any other equipment having a net unit cost of \$25,000 or more, requires the prior approval of the Department. As already discussed, reimbursement for SAVE costs at the 100 percent level is conditional upon FNS approval of the Plan of Operation submittals required by this rule.

Pending revisions to Form SF-269, Financial Status Report, costs associated with the SAVE Program must

be reported on an attachment to the quarterly submittal of the SF-269.

Implementation—§ 272.1(g)

In accordance with section 121 of IRCA, this rulemaking must be implemented as follows:

No later than October 1, 1988 for all new applicants, and no later than the first recertification on or after October 1, 1988 for the participating caseload, State agencies must implement the provisions of § 272.2(b) relating to the alien/citizenship statement and notification of verification with INS; the provisions of § 273.1(b) relating to nonhousehold members; the provisions of § 273.2(f)(1)(ii) relating to the mandatory verification of alien status; the provisions of § 273.2(h)(e) relating to delays in application processing; and the provisions of § 273.2(h)(3) relating to treatment of income and resources of nonhousehold members.

Unless a waiver has been approved by FNS by October 1, 1988, State agencies must implement all other provisions of this rule no later than October 1, 1988. Implementation by October 1, 1988 must be accomplished either by obtaining FNS approval to a Plan of Operation as required in the rule at § 272.11(e) or by submitting to FNS a substantially approvable Plan of Operation as described in material which FNS Regional Offices provided State agencies on or about September 2, 1988. That material provided points for State agencies to consider relative to requesting waivers. State agencies should contact FNS Regional Offices if they need further guidance on waivers.

List of Subjects

7 FR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 272, 273, 275 and 277 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 275, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definitions of "Alien Status Verification Index (ASVI)" and "Systematic Alien Verification for Entitlements (SAVE)" are added in alphabetical order to read as follows:

§ 271.2 Definitions.

* * * * *

Alien Status Verification Index (ASVI) means the automated database maintained by the Immigration and Naturalization Service which may be accessed by State agencies to verify immigration status.

Systematic Alien Verification for Entitlements (SAVE) means the INS program whereby State agencies may verify the validity of documents provided by aliens applying for food stamp benefits by obtaining information from a central data file.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. To the table of contents for Part 272 is added in numerical order a new § 272.11 as follows:

Sec.

272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

4. In § 272.1, paragraphs (c)(1)(iii) through (c)(1)(v) are redesignated as paragraphs (c)(1)(iv) through (c)(1)(vi), a new paragraph (c)(1)(iii) is added, and paragraph (g)(102) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) Disclosure.

(1) * * *

(iii) Persons directly connected with the verification of immigration status of aliens applying for food stamp benefits, through the Systematic Alien Verification for Entitlements (SAVE) Program, to the extent the information is necessary to identify the individual for verification purposes.

* * * * *

(g) Implementation. * * *

(102) *Amendment No. 307.* The provisions of this amendment are effective immediately and shall be implemented as follows:

(i) No later than October 1, 1988 for all new applicants, and no later than the first recertification on or after October 1, 1988 for the participating caseload, State agencies shall implement the provisions of § 272.2(b) relating to the alien/citizenship statement and notification of verification with INS; the provisions of § 273.1(b) relating to nonhousehold members; the provisions of § 273.2(f)(1)(ii) relating to the mandatory verification of alien status; the provisions of § 273.2(h)(3) relating to delays in application processing; and the provisions of § 272.11(c) relating to the treatment of income and resources of nonhousehold members; and

(ii) Unless a waiver has been approved by FNS by October 1, 1988, State agencies shall implement all other provisions of this rule no later than October 1, 1988. Implementation by October 1, 1988 shall be accomplished either by obtaining FNS approval to a Plan of Operation as required in the rule at § 272.11(e) or by submitting to FNS a substantially approvable Plan of Operation as described in material which FNS Regional Offices provided State agencies on or about September 2, 1988. That material provided points for State agencies to consider relative to requesting waivers. State agencies should contact FNS Regional Offices if they need further guidance on waivers.

5. In § 272.2 the seventh sentence of paragraph (a)(2) is amended by adding the words, "the Systematic Alien Verification for Entitlements (SAVE) Plan," after the words "the optional Nutrition Education Plan." A new paragraph (d)(1)(vii) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) Planning Documents.

(1) * * *

(vii) A plan for the Systematic Alien Verification for Entitlements (SAVE) Program as required by § 272.11(e).

* * * * *

6. A new § 272.11 is added to read as follows:

§ 272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

(a) *General.* A State agency shall participate in the SAVE Program established by the Immigration and Naturalization Service (INS), in order to verify the validity of documents provided by aliens applying for food

stamp benefits with the central data files maintained by INS.

(b) *Agreements.* (1) Prior to implementing the SAVE Program, the State agency shall execute an agreement with INS. The agreement shall specify the information to be exchanged and the procedures which will be used in the exchange of information.

(2) The agreement shall cover at least the following areas:

(i) Identification of positions of all agency officials with authority to request immigration status information;

(ii) Identification and location of all SAVE access points covered by the agreement;

(iii) For automated SAVE verification through access to the Alien Status Verification Index (ASVI), as outlined in paragraph (d)(1) of this section, a description of the access method and procedures;

(iv) For secondary verification as described in paragraph (d)(2) of this section, the locations of INS District Offices to which verification requests will be directed;

(v) The safeguards limiting release or redisclosure as required by State or Federal law or regulation as discussed in § 272.1(c) and as may be required by other guidelines published by the Secretary; and

(vi) Reimbursement or billing agreements for ongoing SAVE operational costs, as well as any developmental costs associated with establishing access to the ASVI database.

(c) *Use of data.* The State agency shall use information obtained through the SAVE Program only for the purposes of:

(1) Verifying the validity of documentation of alien status presented by an applicant;

(2) Verifying an individual's eligibility for benefits;

(3) Investigating whether participating households received benefits to which they were not entitled, if an individual was previously certified to receive benefits on the basis of eligible alien status; and

(4) Assisting in or conducting administrative disqualification hearings, or criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(d) *Method of verification—*

(1) *SAVE verification through ASVI access.* (i) The State agency shall establish a method of accessing the Alien Status Verification Index (ASVI) database and shall attempt to verify the alien's documented status through this method before proceeding to secondary verification unless:

(A) The State agency has determined that the documentation presented is questionable; or

(B) The State agency accepts documents that are not issued by the INS but are determined by the State agency to be reasonable evidence of the alien's immigration status.

(ii) Methods of access to the ASVI may include:

(A) Direct automated access through dedicated telecommunications, modem, point-of-sale terminal, telephone or other access device; or

(B) Periodic file match.

(iii) The State agency shall describe the methods of access in the attachment to the Plan of Operation and shall obtain prior approval from FNS as prescribed by § 277.19 before obtaining equipment, supplies or services to establish such access.

(iv) The State agency shall ensure that the method of access to the ASVI protects the individual's privacy to the maximum degree possible.

(2) *Secondary SAVE verification.* The State agency may verify the documentation presented by an alien applicant by completing INS Form G-845 and submitting photocopies of such documentation to the INS for verification as described in § 272.2(f)(10). This secondary verification procedure shall be used by the State agency whenever the applicant-individual's documented alien status has not been verified through automated access to the ASVI as described in paragraph (d)(1) of this section or significant discrepancies exist between the data on the ASVI and the information provided by the alien applicant.

(e) *Plan of operation.* (1) The requirements for participation in the SAVE Program shall be included in an attachment to the State agency's Plan of Operation as required in § 272.2(d). This document shall include a description of procedures used, method of access and the agreement specified in paragraph (b) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households as specified in § 272.1.

(2) The State agency shall also submit as part of the plan a Budget Projection Statement (FNS-366A) which includes an estimate of costs for the implementation and operation of the SAVE Program, as outlined in § 277.19(e). The State agency shall submit with the Budget Projection Statement a narrative justification of estimated costs as required in § 272.2(c)(1)(i).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

7. Section 273.1 is amended by adding a new paragraph (b)(2)(viii) to read as follows:

§ 273.1 Household concept.

(b) *Nonhousehold members.* * * *

(2) * * *

(viii) Individuals who do not attest to their citizenship or alien status as set forth in § 273.2(b).

8. In § 273.2:

a. Paragraph (b) is amended by adding five new sentences between the fourth and fifth sentences and by adding a new sentence to the end of the paragraph.

b. Paragraph (f)(1)(ii)(B) is revised.

c. The first sentence in paragraph (f)(1)(ii)(C) is revised.

d. Paragraphs (f)(1)(ii)(E), (f)(1)(ii)(F) and the first sentence in paragraph (f)(1)(ii)(G) are revised.

e. A new paragraph (f)(10) is added.

f. The second sentence in paragraph (h)(3)(i) is revised.

The additions and revisions read as follows:

§ 273.2 Application processing.

(b) *Food stamp application form.* * * * In addition, the application shall contain a statement signed by each household member attesting, under penalty of perjury, to his or her citizenship or alien status. Adults shall sign for household members under 18 years of age. However, if there are no adult members in the household, the applicant shall sign the statement for himself or herself and for all other members in the household who are under 18 years of age. An applicant household member who does not sign the statement shall be ineligible. The income and resources of the ineligible household members shall be considered available in determining the eligibility of any remaining household members as set forth in § 273.11(c)(2). * * * All applicants for food stamp benefits shall be notified on the application form that the alien status of any household member may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information received from INS may affect the household's eligibility and level of benefits.

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.* * * *

(B) Aliens in the categories specified in § 273.4(a) (2) and (3) shall present either an Immigration and Naturalization Service (INS) Form I-151 or I-551, or such other documents which identify the aliens' immigration status and which the State agency determines are reasonable of the aliens' immigration status.

(C) Aliens in the categories specified in § 273.4 (a)(4) through (a)(7) shall present an INS Form I-94: *Arrival-Departure Record* or other documents which identify the aliens' immigration status and which the State agency determines are reasonable evidence of the aliens' immigration status. * * *

(E) The State agency is responsible to offer to contact INS when the alien has an INS document that does not clearly indicate eligible or ineligible alien status. The State agency does not need to offer to contact INS on the alien's behalf when the alien does not provide an INS document. However, when State agencies accept non-INS documentation determined to be reasonable evidence of the alien's immigration status as specified in paragraphs (f)(1)(ii) (B), (C), and (D) of this section, the State agency shall photocopy the document and transmit the photocopy to INS for verification. Pending such verification, the State agency shall not delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status. The State agency does not need to receive the alien applicant's written consent in order to transmit the photocopy to INS.

(F) The State agency shall provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. When the State agency accepts non-INS documentation as specified in paragraphs (f)(1)(ii) (B), (C), and (D) of this section and fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(G) Except as specified in paragraphs (f)(1)(ii)(F) and (f)(10)(i) of this section, the alien applicant whose status is questionable shall be ineligible until the alien provides acceptable documentation. * * *

(10) *Use of SAVE.* When participating in the INS SAVE Program to verify the validity of documents presented by applicant aliens, State agency's shall use the following procedures:

(i) The State agency shall provide an applicant alien with a reasonable opportunity to submit acceptable documentation of their eligible alien status prior to the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. An alien who has been given a reasonable opportunity to submit acceptable documentation and has not done so as of the 30th day following the date of application shall not be certified for benefits until acceptable documentation has been submitted. However, if the 10-day reasonable opportunity period provided by the State agency does not lapse before the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(ii) The written consent of the alien applicant shall not be required as a condition for the State agency to contact INS to verify the validity of documentation.

(iii) State agencies which access the ASVI database through an automated access shall also submit INS Form G-845, with an attached photocopy of the alien's document, to INS whenever the initial automated access does not confirm the validity of the alien's documentation or a significant discrepancy exists between the data provided by the ASVI and the information provided by the applicant. Pending such responses from either the ASVI or INS Form G-845, the State agency shall not delay, deny, reduce, or terminate the alien's eligibility for benefits on the basis of the individual's alien status.

(iv) If the State agency determines, after complying with the requirements of this section, that the alien is not in an eligible alien status, the State agency shall take action, including proper notices to the household, to terminate, deny or reduce benefits. The State agency shall provide households the opportunity to request a fair hearing under § 273.15 prior to any adverse action.

(v) The use of SAVE shall be documented in the casefile or other agency records. When the State agency is waiting for a response from SAVE, agency records shall contain either a notation showing the date of the State agency's transmission or a copy of the

INS Form G-845 sent to INS. Once the SAVE response is received, agency records shall show documentation of the ASVI Query Verification Number or contain a copy of the INS-annotated Form G-845. Whenever the response from automated access to the ASVI directs the eligibility worker to initiate secondary verification, agency records shall show documentation of the ASVI Query Verification Number and contain a copy of the INS Form G-845.

(h) *Delays in Processing.* * * *

(3) *Delays caused by the State agency.*

(i) * * * Except as specified in §§ 273.2(f)(1)(ii)(F) and 273.2(f)(10)(i), the State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. * * *

§ 273.11 [Amended]

9. In § 273.11:

a. Introductory text of paragraph (c) is amended by adding after the phrase, "to obtain or provide an SSN," the phrase, "is ineligible for failing to sign the application attesting to his or her citizenship or alien status,".

b. Introductory text of paragraph (c)(2) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

(c) *Treatment of income and resources of certain nonhousehold members.* * * *

(2) *SSN disqualification, ineligible alien or failure to attest to citizenship or alien status.* The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for being an ineligible alien, for failing to attest to citizenship or alien status on the application for food stamps, or because of disqualification for refusal to obtain or provide an SSN shall be determined as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

10. Section 275.12 is amended by adding a new paragraph (d)(2)(vi) to read as follows:

§ 275.12 Review of active cases.

(d) *Variance identification.* * * *

(2) * * *

(vi) Two variances relating to the Immigration and Naturalization Service's (INS) Systematic Alien Verification for Entitlements (SAVE) Program.

(A) A variance based on a verification of alien documentation by INS. The reviewer shall exclude such variance only if the State agency properly used SAVE and the State agency provides the reviewer with:

- (1) The alien's name;
- (2) The alien's status; and
- (3) Either the Alien Status Verification Index (ASVI) Query Verification Number or the INS Form G-845, as annotated by INS.

(B) A variance based on the State agency's wait for the response of INS to the State agency's request for official verification of the alien's documentation. The reviewer shall exclude such variance only if the State agency properly used SAVE and the State agency provides the reviewer with either:

- (1) The date of request, if the State agency was waiting for an automated response; or
- (2) A copy of the completed Form G-845, if the State agency was waiting for secondary verification from INS.

11. Section 275.13 is amended by redesignating the text of paragraph (c) as paragraph (c)(1) and by adding new paragraph (c)(2), to read as follows:

§ 275.13 Review of negative cases.

(c) *Error analysis.* * * *

(2) The reviewer shall exclude a variance when the State agency erroneously denied or terminated a household's participation based on an erroneous verification of alien documentation by the Immigration and Naturalization Services (INS) Systematic Alien Verification for Entitlements (SAVE) Program. The reviewer shall exclude the variance only if the State agency properly used SAVE, and the State agency provides the reviewer with:

- (i) The alien's name;
- (ii) The alien's status; and
- (iii) Either the Alien Status Verification Index (ASVI) Query Verification Number or the INS Form G-845, as annotated by INS.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

12. To the table of contents for Part

277 is added in numerical order a new § 277.19 as follows:

Sec.
277.19 Alien Verification Activities.

13. In § 277.4 a new paragraph (b)(10) is added to read as follows:

§ 277.4 Funding.

(b) *Federal Reimbursement Rate.*

(10) A 100 percent Federal Financial Participation rate shall be available for costs incurred in the verification of the documented alien status of FSP applicants through the Systematic Alien Verification for Entitlements (SAVE) Program. The charges must be contained in a budget or budget revisions approved by FNS and follow the allowability provisions found in § 277.19.

14. A new § 277.19 is added to read as follows:

§ 277.19 Alien Verification Activities.

(a) *General.* This section establishes the standards and procedures for Federal Financial Participation (FFP) for State and local costs incurred in the verification of the documented alien status of FSP applicants through the SAVE Program, as outlined in § 272.11. These costs are eligible for 100 percent FFP under the terms and conditions of this section. In addition, any such costs funded at the 100 percent rate must be necessary and reasonable in the judgment of FNS, based on cost benefit analysis and/or other methods determined by FNS.

(b) *Funding.* Upon submission to and approval by FNS of a budget, or budget revisions, and the attachment to the State Plan of Operations required by § 272.11(e), State agencies will be funded at the 100 percent FFP rate for all allowable direct and indirect costs in accordance with the requirements contained in this section.

(c) *Eligible costs.* The following costs are eligible for 100 percent FFP:

(1) *Personnel.* Charges for time spent by State and local employees in the verification of the documented alien status of Food Stamp Program applicants through the SAVE Program. The allocated share of indirect costs attributable to this staff is also an allowable charge. All such costs, both direct and indirect, shall be documented through the use of time sheets or time studies, or through another method specified in the State Plan of Operations and approved by FNS.

(2) *Equipment and supplies.* Charges

for equipment and supplies in proportion to their use in implementing and operating the SAVE Program by the State and/or local agencies. ADP equipment may only be acquired following prior approval by FNS. FNS approval shall be obtained as prescribed by § 277.18. Non-ADP equipment having a net unit cost of \$25,000 or more must also receive prior FNS approval for such charges.

(3) *Fees and other charges.* Charges for fees and other costs attributable to the implementation and operation of the SAVE Program by State and local agencies are allowable. Specifically, any fees charged for the use of the Immigration and Naturalization Service's alien verification system are allowable. Any other charges, such as use allowances for space used by alien verification units are allowable.

(d) *Ineligible costs.* Costs reimbursable at the 100 percent FFP rate are limited to those costs incurred in the implementation and operation of the SAVE Program as outlined in § 272.11. Costs associated with routine certification and verification activities, including mandatory alien verification procedures as described in § 273.2(f)(1)(ii), are eligible for funding as prescribed by § 277.4(b).

(e) *Budget submittals.* The State agency shall include a projection of anticipated costs for the implementation and operation of the SAVE Program as part of the normal submittal of the State Food Stamp Program budget, as required by § 277.3, or as a revision to a budget previously submitted. These costs shall be included in the column for "other" expenses on the Budget Projection Statement (FNS-366A) and identified separately on an attachment to the FNS-366A.

(f) *Reporting.* Expenditures for the implementation and operation of the SAVE Program shall be reported on the Financial Status Report (SF-269) in the column containing "other" expenses. SAVE Program expenditures shall also be separately identified in an attachment to be submitted with each quarterly SF-269 report. Any costs requiring prior approval by FNS shall not be claimed until approved.

Date: September 30, 1988.

Anna Kondratas,
Administrator.

[FR Doc. 88-23087 Filed 10-6-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service**7 CFR Part 910****[Lemon Reg. 634]****Lemons Grown in California and Arizona; Limitation of Handling****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: Regulation 634 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 206,500 cartons during the period October 9 through October 15, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 634 (§ 910.934) is effective for the period October 9 through October 15, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC. 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative

Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The committee met publicly on October 4, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 9 to 4 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons had declined.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.934 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.934 Lemon Regulations 634.

The quantity of lemons grown in California and Arizona which may be handled during the period October 9, 1988, through October 15, 1988, is established at 206,500 cartons.

Dated: October 4, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 23315 Filed 10-6-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1126**[Docket No. AO-231-A55; DA-88-109]****Milk in the Texas Marketing Area; Order Amending Order****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This action provides transportation credits to handlers for hauling excess producer milk to nonpool plants located outside the State of Texas. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits would apply during the months of March-June and the last half of December and would be limited to milk going into Class II and Class III uses. The credits would be computed at a rate of 2.4 cents per 10 miles. Credits would be limited to handlers who transfer milk from plants located in Zone 1 of the marketing area while credits on milk that is moved directly from farms to nonpool plants would be limited to milk produced in northern Texas and southern Oklahoma. Handlers would also receive a credit to recognize costs associated with hauling milk from higher- to lower-priced areas. The amount of milk to which transportation credits apply would be reduced to the extent that a handler or affiliate of the handler caused milk from outside the State of Texas to be received at plants in the marketing area.

The changes to the order, which are based on proposals considered at a public hearing held on February 2-3, 1988, in Irving, Texas, are necessary to partially compensate handlers for transportation costs incurred in clearing the market of surplus milk production that exceeds local manufacturing capacity.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Issued December 30, 1987, published January 6, 1988 (53 FR 256).

Tentative Decision: Issued June 6, 1988; published June 13, 1988 (53 FR 22003).

Interim Amendments: Issued July 6, 1988; published July 12, 1988 (53 FR 26226).

Final Decision: Issued September 12, 1988; published September 19, 1988 (53 FR 36321).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) **Findings Upon the Basis of the Hearing Record.** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing order (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) **Determinations.** It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area,

to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 1126.55 is revised to read as follows:

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 16-31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42 (b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the

distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1-A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned the Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply.

3. In § 1126.60, paragraph (h) is revised to read as follows:

§ 1126.60 Handler's value for computing uniform price.

* * * * *

(h) Deduct any credit applicable pursuant to § 1126.55.

Signed at Washington, DC, on: October 3, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture Marketing and Inspection Services.

[FR Doc. 88-23236 Filed 10-6-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1137

[DA-88-121]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Suspension of rule.

SUMMARY: This action suspends for the months of September 1988 through February 1989 portions of the Eastern Colorado Federal milk order. The suspended provisions were also suspended for the same months in 1986-87 and 1987-88. The suspended provisions relate to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distribution plant. The action was requested by a cooperative association that represents producers who supply a significant amount of milk for the market. The suspension is necessary to assure that the association's member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales without incurring the expense of uneconomic and inefficient movements of milk.

EFFECTIVE DATE: October 7, 1988.**FOR FURTHER INFORMATION CONTACT:**

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION:

Prior document in this proceeding:
Notice of Proposed Suspension: Issued September 13, 1988; published September 16, 1988 (53 FR 36054).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on September 16, 1988 (53 FR 36054) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1988 through February 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August".

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant".

Statement of Consideration

This action removes for the months of September 1988 through February 1989 the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February, and suspends the requirement that three deliveries of each producer's milk be received at a pool distribution plant each month.

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. In comments filed in response to the proposed suspension, the cooperative stated that the volume of producer milk pooled on the Eastern Colorado order during the first seven months of 1988 increased 5.6 percent over year-earlier levels. During the same period, according to the cooperative, producer milk used in Class I increased only 2.9 percent over the previous year. Mid-Am stated that the impact of existing drought conditions and the resulting higher feed and hay prices on

the amount of producer milk pooled on the Eastern Colorado order is impossible to determine at this time, but projected that there will be ample supplies of locally produced milk to meet the fluid requirements of Eastern Colorado distributing plants.

Mid-Am observed that suspension of the order's "touch-base" delivery requirement for each producer would not allow for additional milk supplies to be pooled, but would provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants.

Comments filed by Western Dairymen Cooperative, Inc., a cooperative association representing a majority of the producers pooled under the order, supported the suspension.

Without the suspension action, Mid-Am would be required to ship milk from the western Nebraska and western Kansas area to Denver-area distributing plants, displacing locally-produced milk and resulting in shipments from the Denver area to surplus handling plants increasing by an identical amount. The suspension is necessary to prevent uneconomic movements of milk. Without the continued suspension, the cooperative could be expected to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that without extensive unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in §§ 1137.7(b) and 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of September 1988 through February 1989:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1137.7 [Amended (temporarily suspended in part)]

2. In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August" are suspended.

§ 1137.12 [Amended (temporarily suspended in part)]

3. In the first sentence of § 1137.12(a)(1), the words, "from whom at least three deliveries of milk are received during the month at a distributing pool plant" are suspended.

Signed at Washington, DC, on October 3, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-23235 Filed 10-6-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88-138]

Change in Disease Status of Papua New Guinea Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR Part 94 by adding Papua New Guinea to the list of countries declared to be free of rinderpest and foot-and-mouth disease. Rinderpest and foot-and-mouth disease have never been reported in Papua New Guinea, and there are adequate controls to prevent the introduction and spread of these diseases. We are also adding Papua New Guinea to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of meat and other animal products into the United States. This action will allow the importation of ruminants and swine, and fresh, chilled,

and frozen meats of ruminants and swine into the United States from Papua New Guinea under certain restrictions.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed, among other things, to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and viscerotropic velogenic newcastle disease.

On July 7, 1988, we published in the *Federal Register* (53 FR 25498-25499, Docket Number 88-066), a document proposing to amend § 94.1(a)(2) by adding Papua New Guinea to the list of countries declared to be free of rinderpest and foot-and-mouth disease and also to amend § 94.11(a) by adding Papua New Guinea to the list of countries free of rinderpest and foot-and-mouth disease that are subject to special restrictions on the importation of their meat and other animal products into the United States. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before August 8, 1988. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Effective Date

This final rule is effective upon publication. It relieves certain restrictions on the importation of meat and other animal products into the United States. Accordingly, prompt action was taken to remove these restrictions.

Executive Order and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers,

individual industries, federal, state, or local government agencies, or geographic regions; and will not cause 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This change will not result in the importation of significant numbers of ruminants, swine, meat or other animal products. We anticipate an increase in the importation of water buffalo since Papua New Guinea will be one of the few water-buffalo-exporting countries in the world that will be recognized as being free of rinderpest and foot-and-mouth disease. At present, we are aware of only one individual in the United States who has indicated a desire to import water buffalo. This individual is not involved in a project to import these animals from another source, Trinidad. We believe it is unlikely that he will alter his plans in order to import water buffalo from Papua New Guinea, which is farther from the United States than is Trinidad, because of the increased cost of doing so. Since there are only about 700 water buffalo in Papua New Guinea, the number that could be imported from that country will not be great. We do not anticipate that any meat or meat products will be imported.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that the action will not have a significant economic impact on a substantial number of small entities. Paperwork Reduction Act.

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic

Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1308; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Papua New Guinea," immediately after "Panama Canal Zone,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding "Papua New Guinea," immediately after "Norway,".

Done in Washington, DC this 4th day of October, 1988.

Jams W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-23234 Filed 10-6-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 056CE; Special Conditions No. 23-ACE-041]

Special Conditions; GROB Model 115 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special condition is issued to GROB Werke GmbH to become part of the type certification basis for the GROB Model 115 Series Airplanes. The airplane will have a novel and unusual design feature related to the use of composite materials for primary structure which was not envisaged in the airworthiness standards of 14 CFR Part 23 of the Federal Aviation Regulations (FAR) and for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to

that provided by the airworthiness standards of Part 23.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Type Certification Basis

The type certification basis for the GROB Model 115 Airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; Part 23, effective February 1, 1965, as amended by amendments 23-1 through 23-32, effective December 12, 1985; Part 36, effective December 1, 1969, as amended by amendment 36-1 through the amendment effective on the date of type certification; and the special condition adopted by this rulemaking action.

Background

On June 23, 1986, GROB Werke GmbH and Company KG, Flugzeugbau, Am Flugplatz, D-8939 Mattsies, Federal Republic of Germany, made application to the FAA for a type certificate for the GROB Model 115 Airplane. The GROB Model 115 will be a two-place, single-engine airplane with tricycle landing gear, a gross weight of 1,874 pounds, and constructed using composite material in the primary structure.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the GROB Model 115 Airplane contains a novel or unusual design feature related to the use of composite materials for primary structure which was not envisaged by the applicable Part 23 airworthiness standards. A special condition is considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design feature of the GROB Model 115 Airplane.

A Notice of Proposed Special Condition (NPRM), Notice No. 23-ACE-

041, was published in the *Federal Register* on April 22, 1988 (53 FR 13283). In order to allow coordination with foreign entities, the comment period was reopened on May 31, 1988 (53 FR 19798) with a closing date for comments of August 22, 1988.

Discussion of Comments

The FAA received one set of comments in response to Notice No. 23-ACE-041.

That commenter referred to the emergency landing dynamic conditions of § 23.562 and noted that the proposed special condition does not address dynamic disbond failure conditions.

The FAA amended Part 23 to add § 23.562 on August 15, 1988 (53 FR 30802). The dynamic conditions identified in that section are intended to apply only to seat/restraint systems and are not applicable to primary aircraft structure unless that structure is directly related to the seat/restraint system. Accordingly, the special condition is adopted as proposed.

Federalism Implications

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

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

PARTS 21 AND 23—[AMENDED]

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of the Special Condition

In consideration of the foregoing, the following special condition is issued as a part of the type certification basis for the GROB Model 115 Airplanes:

1. Evaluation of Composite Structure

In lieu of complying with § 23.572 and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of airplane, each wing, wing carry-through, wing attaching structure, horizontal stabilizer,

stabilizer carry-through and attaching structures, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations, must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry-through, wing attaching structure, vertical stabilizer, horizontal stabilizer, horizontal stabilizer carry-through and attaching structure, wing flaps, and all moveable control surfaces, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must

be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbands of each bonded joint consistent with the capability to withstand the loads in paragraph (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbands of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to VD with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

Issued in Kansas City, Missouri, on September 27, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 88-23162 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-122-AD; Amdt. 39-6045]

Airworthiness Directives; Airbus Model A300 and A310-200 Series Airplanes; and Boeing Model 737-200, 737-300, 757-200, 767-200, and 767-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to the two-engine transport category airplanes indicated above, which are used in operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "extended range," "EROP," or

"ETOP," operations. This AD requires a repetitive check of the fuel crossfeed valve operation during the last hour of cruise on each extended range flight, and replacement of the valve, if necessary. This action is prompted by the design of two-engine airplane fuel systems, which have one fuel crossfeed valve through which fuel from tanks located on one side of the airplane may be used by the engine located on the other side. A crossfeed valve that fails to open during a single engine diversion on an extended range flight would prevent the operating engine from being able to consume all of the usable fuel on board the airplane. This condition, if not corrected, could result in the inability of the airplane to stay within the lateral imbalance limit, or could result in fuel starvation in the operating engine before the airplane is able to reach the diversion airport.

DATE: October 24, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. Steven P. Clark, Propulsion Branch, ANM-140S; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During a recent investigation of fuel valve actuator problems on a two-engine transport airplane used in extended range operations, it was determined that a fuel crossfeed valve failure during a single engine diversion could result in the inability of the airplane to stay within its lateral imbalance limit, and the possibility of the operating engine running out of fuel before reaching the diversion airport. Extended range operation with two-engine airplanes is defined in FAA Advisory Circular 120-42 as an operation over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport and is also referred to as "EROP" or "ETOP" operations.

The fuel crossfeed valve on two-engine airplanes is not used for normal operations, and is usually opened only to prevent or correct fuel imbalance, such as after an engine shutdown, or during minimum fuel operations. If latent valve failure occurred, it probably would not be detected until the valve is needed to be opened for one of the purposes described above. All two-engine airplanes currently approved, or under consideration, for extended range operations are subject to the same conditions. This same type of fuel system design has been used for many

years on two-engine airplanes operating under the FAR Part 121 "60 minute" rule, without any identified safety hazard. This has been attributed to the generally short diversion times to an alternate airport being flown by two-engine airplanes prior to the approval of extended range operations. The hazard becomes more acute as the diversion time is lengthened. Therefore, the requirements of this AD action are applicable to airplanes used in extended range operations.

Many types of fuel valve failures are the result of "cold soaking" for several hours at cruise altitudes. Opening the crossfeed valve during the extended range portion of a flight is not a viable procedure for ensuring a fuel transfer capability, because of the additional pilot workload involved in managing fuel imbalance caused by differences in boost pump performance on each side of the airplane. Therefore, an operational check of valve function near the end of cruise would reveal cold-soak failures, as well as failures that are not dependent on the valve temperature. Such checks would also take place under conditions indicative of the operating environment at the time the crossfeed valve would need to be used on an extended range flight. Although the major portion of a given flight may be exposed to an unknown valve failure, the one flight risk of having an engine failure coupled with a failed valve is acceptably small when compared to the benefits of performing the check with a cold soaked valve.

Since this condition is likely to exist or develop on other two-engine airplanes of a similar type design, this AD requires a repetitive check of crossfeed valve operation during the last hour of cruise on each extended range flight, and replacement of any valve not exhibiting proper operation.

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

Airbus Industrie and Boeing: Applies to all Airbus Model A300 and A310-200 series airplanes, and Boeing Models 737-200, 737-300, 757-200, 767-200, and 767-300 series airplanes, certificated in any category, which are approved for operations over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations, referred to as "extended range," "EROP," or "ETOP" operations. Compliance required within 20 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the fuel crossfeed valve during a single engine diversion on an extended range flight, which could result in the inability of the airplane to stay within the airplane lateral imbalance limit, or in fuel starvation in the operating engine before the airplane is able to reach the diversion airport, accomplish the following:

A. Revise the *Limitations Section* of the FAA approved Airplane Flight Manual (AFM) or Flight Manual Appendix, as appropriate, by adding the following instructions. This may be accomplished by inserting a copy of this AD in the AFM.

Fuel Crossfeed Valve

Perform an operational check of the fuel crossfeed valve during the last hour of cruise flight during each extended range operation. Enter operational check outcome in the airplane log.

B. Replace, prior to next flight, any fuel crossfeed valve not exhibiting proper operation with a serviceable valve.

C. 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 Operations Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

This amendment becomes effective October 24, 1988.

Issued in Seattle, Washington, on September 30, 1988.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-23159 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ASW-61; Amdt. 39-6043]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) GmbH Model BK-117A-1, BK-117A-3, and BK-117A-4 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires a change to the flight manual procedures on MBB Model BK-117A-1, BK-117A-3, and BK-117A-4 helicopters. The AD is needed to provide new procedures to the flightcrew for an emergency engine shutdown or for a landing upon indication of an impending engine rotor burst which could be hazardous.

DATES: Effective Date: November 16, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, PA 19380.

A copy of the service information is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest

Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Southwest Region, Aircraft Certification Service, Fort Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive requiring the addition of emergency engine shutdown procedures to the flight manual on certain MBB rotorcraft was published in the Federal Register on March 14, 1988 (53 FR 8220).

The proposal was prompted by reports that failure of certain bearings in the engines installed in MBB BK-117A-1, BK-117A-3, and BK-117A-4 helicopters may result in a sequential pattern of turbine wheel aft movement and contact with engine afterbody components resulting in a hazardous turbine wheel burst. It has been established that this event will be preceded by simultaneous illumination of the engine metal chip detector light and fluctuation or loss of engine power turbine speed (N₂) indication. MBB has issued a flight manual revision which instructs the flightcrew to immediately shut down the engine and land the helicopter when these events are observed, thus enabling the flightcrew to avoid this hazardous rotor burst condition.

Since this condition is likely to exist or develop on other helicopters of the same type design, and the AD requires these safety related flight manual revisions to be properly adopted in the applicable flight manual on MBB Model BK-117A-1, BK-117A-3, and BK-117A-4 helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

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

The FAA has determined that this regulation only involves 92 aircraft at an approximate cost of each aircraft of \$32. The total economic impact to any one operator would not exceed \$960.

Therefore, I certify that this action (1) is

not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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 FAR 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 AD:

Messerschmitt-Bolkow-Blohm (MBB):

Applies to Model BK-117A-1, BK-117A-3, and BK-117A-4 helicopters, all serial numbers, certificated in all categories, equipped with Lycoming Model LTS-101 series engines (Docket 87-ASW-61).

Compliance is required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

To provide the flightcrew with emergency engine shut down instructions to be followed in event of an impending engine turbine burst, insert the following updates (or the forthcoming permanent equivalent revisions) into the applicable FAA-approved flight manual.

(a) For the Model BK-117A-1 and BK-117A-3 helicopters, insert into the applicable Rotorcraft Flight Manual—MBB Temporary Revision 5, dated July 27, 1987.

(b) For the Model BK-117A-4 helicopter, insert into the applicable Rotorcraft Flight Manual—MBB Temporary Revision 1, dated July 27, 1987.

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Rotorcraft Directorate, Aircraft Certification Service, ASW-100, FAA, Fort Worth, Texas 76193-0100.

This amendment becomes effective November 16, 1988.

Issued in Fort Worth, Texas, on September 26, 1988.

L.B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 88-23163 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWA-2]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the descriptions of the Monterey Peninsula Airport, CA, and the Greater Peoria Airport, IL, Airport Radar Service Areas (ARSA's). An ARSA is operational only during the hours of operation of the control tower and associated radar approach control facility. Monterey Peninsula Airport, Monterey Tower and Approach Control Facility and Greater Peoria Airport, Peoria Tower and Approach Control Facility provide service only during a portion of the day. The descriptions of the hours were inadvertently omitted from the ARSA descriptions as published on September 20, 1988. This action corrects those descriptions.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Betty W. Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-21442 was published on September 20, 1988, establishing the Monterey Peninsula Airport, CA, the Greater Peoria Airport, IL, ARSA's and two other ARSA's. The legal descriptions of the ARSA's inadvertently omitted a narrative description of the limited hours of operation. An ARSA is operational only during the hours the control tower and approach control facility are operating. This action corrects that omission. Due to the need to inform the public about the hours of operation, I find that good cause exists for making this amendment

effective less than 30 days after publication.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 88-21442, as published in the Federal Register on September 20, 1988, (53 FR 36542) is corrected as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Corrected]

2. Section 71.501 is amended as follows:

Monterey Peninsula Airport, CA [New]

By adding the following words to the end of the description: "This airport radar service area is effective during the specific days and hours of operation of Monterey Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Greater Peoria Airport, IL [New]

By adding the following words to the end of the description: "This airport radar service area is effective during the specific days and hours of operation of Peoria Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Washington, DC, on October 3, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23164 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25711; Amdt. No. 1384]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require

making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is necessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB,

NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective December 15, 1988

Pittsfield, IL—Pittsfield Penstone Muni, VOR/DME RWY 13, Amdt. 3
Pittsfield, IL—Pittsfield Penstone Muni, NDB RWY 31, Amdt. 5
Bangor, ME—Bangor Intl, VOR-A, Amdt. 2
Bangor, ME—Bangor Intl, VOR/DME RWY 15, Amdt. 3
Bangor, ME—Bangor Intl, NDB RWY 33, Amdt. 5
Bangor, ME—Bangor Intl, ILS RWY 33, Amdt. 10
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain, NDB RWY 4, Amdt. 17
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS RWY 4, Amdt. 23
Galion, OH—Galion Muni, VOR RWY 23, Amdt. 11
Galion, OH—Galion Muni, RNAV RWY 5, Amdt. 1
Ottawa, OH—Putnam County, NDB RWY 27, Amdt. 3, *Cancelled*
Wadsworth, OH—Wadsworth Muni, NDB RWY 2, Amdt. 2
Fredericksburg, VA—Shannon, VOR RWY 23, Amdt. 6

... Effective November 17, 1988

Siloam Springs, AR—Smith Field, VOR-A, Amdt. 7
Lakeland, FL—Lakeland Muni, NDB RWY 5, Amdt. 1
Lakeland, FL—Lakeland Muni, ILS RWY 5, Amdt. 4
Miami, FL—Miami Intl, VOR RWY 30, Amdt. 7
Toccoa, GA—Toccoa RG Letourneau Field, VOR/DME RWY 2, Orig.
Chicago/Waukegan, IL—Waukegan Regional, RNAV RWY 5, Orig.
Effingham, IL—Effingham County Memorial, VOR RWY 1, Amdt. 7
Paxton, IL—Paxton, VOR RWY 18, Amdt. 1
Pontiac, IL—Pontiac Muni, VOR-A, Amdt. 1
Red Oak, IA—Red Oak Muni, VOR/DME-A, Amdt. 3
Red Oak, IA—Red Oak Muni, NDB RWY 17, Amdt. 6
Houlton, ME—Houlton Intl, VOR RWY 5, Amdt. 9
Omaha, NE—Eppley Airfield, NDB RWY 32L, Orig.
Omaha, NE—Eppley Airfield, ILS RWY 32L, Amdt. 5
Bridgeport, NJ—Bridgeport, VOR RWY 34, Amdt. 6, *Cancelled*
Pittstown, NJ—Sky Manor, VOR RWY 7, Amdt. 2
Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 14
Syracuse, NY—Syracuse Hancock Intl, VOR/DME RWY 32, Orig.
Dayton, OH—James M. Cox Dayton Intl, NDB RWY 6L, Amdt. 5
Dayton, OH—James M. Cox Dayton Intl, NDB RWY 6R, Amdt. 6
Dayton, OH—James M. Cox Dayton Intl, ILS RWY 6L, Amdt. 4
Dayton, OH—James M. Cox Dayton Intl, ILS RWY 18, Amdt. 7

Dayton, OH—James M. Cox Dayton Intl, ILS RWY 24L, Amdt. 6
Dayton, OH—James M. Cox Dayton Intl, ILS RWY 24R, Amdt. 4
Dayton, OH—James M. Cox Dayton Intl, RADAR-1, Amdt. 6
Dayton, OH—James M. Cox Dayton Intl, RNAV RWY 6R, Amdt. 7
Oklahoma City, OK—Will Rogers World, LOC BC RWY 17L, Amdt. 5, *Cancelled*
Allentown, PA—Allentown-Bethlehem-Easton LOC BC RWY 24, Amdt. 19

... Effective September 22, 1988

Columbia, MO—Columbia Regional, VOR RWY 20, Amdt. 2
Columbia, MO—Columbia Regional, VOR/DME RWY 20, Amdt. 1
Columbia, MO—Columbia Regional, LOC BC RWY 20, Amdt. 10

... Effective September 19, 1988

Winston Salem, NC—Smith Reynolds, ILS RWY 33, Amdt. 28

... Effective August 25, 1988

Ontario, CA—Ontario Intl, ILS RWY 26R, Amdt. 2

[FR Doc. 88-23161 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 80511-8187]

Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This notice sets forth the final rule for a new survey, the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons. The survey will update, on an annual basis, data from the quinquennial BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons. A benchmark survey covering 1986 has been conducted; to provide continuity with that survey, the first year of coverage of the BE-22 annual survey will be 1987.

The data from the BE-22 annual survey, together with the data from the BE-20 benchmark survey, will be used to develop U.S. trade policy and support U.S. negotiations on services trade with foreign countries. They will enable the Government to better assess U.S. competitiveness in, and conduct export promotion programs for, services industries. They will also result in improvement in U.S. balance of payments statistics and in the ability of

U.S. services businesses to identify and evaluate market opportunities.

The survey will be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under authority of the International Investment and Trade in Services Survey Act. This final rule implements a portion of the President's responsibilities for collecting data on U.S. services trade under the Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA. This final rule amends 15 CFR Part 801, as published in the *Federal Register* on March 6, 1986.

EFFECTIVE DATES: These rules will be effective November 7, 1988, commencing with the reports covering fiscal year 1987, which will be mailed to respondents in October and will be due December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION:

Background

In the June 20, 1988 *Federal Register*, Volume 53, No. 118 (53 FR 23124), BEA published a notice of proposed rulemaking setting forth the reporting requirements for a new BE-22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. One comment on the proposed rule concerning the treatment of computer software services was received and, as noted below, resulted in the exclusion of sales and purchases of prepackaged computer software from the survey. With the exception of this change, the final rule is the same as the proposed rule.

The BE-22 will fulfill a major part of the President's mandate, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), to conduct a regular data collection program on U.S. services trade. The purpose of the survey is to secure annual data on selected services transactions, both sales and purchases, with unaffiliated foreign persons, by country and by type.

The survey will update, on an annual basis, summary data from the BE-20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, which will be taken once every 5 years. A BE-20 survey concerning 1986 has been conducted; forms were due September 1987 and preliminary results are scheduled for release in September 1988. The final rule implementing the

1986 BE-20 benchmark survey was published in the May 28, 1987 *Federal Register*, Volume 52, No. (52 FR 19842). To provide continuity with that survey, the first year of coverage of the BE-22 annual survey will be 1987.

The criteria for determining who must report are the same on the BE-22 as on the BE-20. A report is required from each U.S. person having one or more individual sale or purchase transactions in excess of \$250,000 with an unaffiliated foreign person in any of the types of services covered. In addition, a U.S. person is requested to provide, on a voluntary basis, information on the total amount of smaller transactions in each type of service, if the total exceeds \$500,000. In order to minimize the reporting burden, only individual transactions that exceed \$250,000 are to be reported, by country, on a mandatory basis. Smaller transactions are requested to be reported voluntarily; the reporting may be based on judgment rather than an exhaustive search of records and the data do not have to be disaggregated by country.

Except for prepackaged computer software (see below), the BE-22 will cover the same types of services as the BE-20, but will collect significantly less detail for several types, namely, for sales of advertising, computer and data processing, and data base and other information services, and for both sales and purchases of telecommunications services. On the BE-20, these services were reported on separate schedules and, for each, detail by sub-type was requested. On the BE-22, no detail by sub-type will be collected for these services.

In the draft of the BE-22 survey submitted to the Office of Management and Budget for clearance, and in the Supplementary Information section of the proposed rule for the BE-22 survey, BEA had proposed disaggregating computer and data processing services into two sub-types—computer software services, including prepackaged software, and other computer and data processing services. During the public comment period on the proposed rule, representatives from the Business Council on the Reduction of Paperwork (BCORP) questioned the inclusion in the BE-22 of prepackaged software. They felt that the full value of such software was probably already reported to the Census Bureau as merchandise trade.

In response to the BCORP's comment, BEA checked further with Census Bureau officials responsible for compiling U.S. merchandise trade data. Current Census Bureau reporting guidelines require only that the media value (e.g., the cost of diskettes, tapes,

and documentation) of prepackaged software be reported on export declarations; the value of the technical information embodied in the software is not to be reported. A check by Census of several export declarations, however, seemed to suggest that the full value is often reported in practice. Furthermore, BEA was informed that, as part of a package of changes to its Foreign Trade Statistics Regulations, Census plans to propose that exports of prepackage software be reported at full value. In light of this development (as well as the apparent *de facto* reporting practice), BEA has decided to remove coverage of sales and purchases of prepackaged computer software from the BE-22 to avoid duplicating the Census data. Sales and purchases of rights to use, reproduce, or distribute such software will continue to be covered by the BE-22, but will be folded into the category for all other computer and data processing services. Thus, there will be only a single category for all types of computer and data processing services, excluding the value of prepackaged software. BEA has incorporated this change on the form and in this final rule.

The public reporting burden for this collection of information is estimated to vary from 4 to 500 hours per response, with an average of 11 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Executive Order 12291

BEA has determined that this final rule is not "major" as defined in E.O. 12291 because it is not likely to 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 government agencies, or geographic regions; or
- (3) 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.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

The collection of information requirement in this final rule has been approved by OMB (OMB No. 0608-0060).

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. Most small businesses are excluded from reporting data on a mandatory basis as a result of the \$250,000 cutoff level applicable to individual transactions under the survey's mandatory reporting provision. Also, under the survey's voluntary reporting provision, the \$500,000 cutoff level applicable to total transactions of a given type excludes many other small businesses from reporting any data. Those that do have reportable transactions are requested to provide judgmental estimates only of the total amount of transactions of a given type, not disaggregated by country. This voluntary reporting provision ensures that smaller businesses with significant international transactions are covered but with the minimum burden possible. Even if a small business is required to file on a mandatory basis, or chooses to report information on a voluntary basis, it is unlikely to be very diversified and will probably report data only for one or two types of services. Thus, the burden on small businesses should be low and a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: September 12, 1988.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 801 as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

2. Section 801.9 is amended by adding paragraph (b)(6) to read as follows:

§ 801.9 [Amended]

* * * * *

(b) * * *

(6) BE-22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons:

(i) *Who must report.* (A) Mandatory reporting—A BE-22 report is required from each U.S. person who had one or more individual sale or purchase transactions in excess of \$250,000 with an unaffiliated foreign person in any of the covered services during the U.S. person's fiscal year. The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(B) Voluntary reporting—U.S. persons receiving a copy of the survey are requested to provide, for each of the covered services, estimates of sale or purchase transactions with an unaffiliated foreign person that are each \$250,000 or less but for which the total value exceeds \$500,000 during the U.S. person's fiscal year. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(C) Any U.S. person receiving a BE-22 survey form from BEA must complete the form and return it to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (b)(6)(i)(A) of this section and/or is not filing information on a voluntary basis must complete the "Basis for not reporting data" and the "Certification." This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(ii) *Covered services.* The services covered by this survey are the same as those covered by the BE-20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986, as listed in § 801.10(d) of this Part, except that sales and purchases of prepackaged computer software are excluded.

(iii) *BE-22 definition of transaction.* (A) "Transaction" means, for purposes of this survey, the total value, as entered on the respondent's books, of services sold to or purchased from an

unaffiliated foreign person during the respondent's fiscal year.

(B) Notwithstanding paragraph (b)(6)(iii)(A) of this section, in the following cases, a "transaction" is to be measured by an item other than sales or purchases in determining whether the thresholds for mandatory or voluntary reporting are exceeded:

(1) *Advertising.* Advertising agencies should use gross billings to unaffiliated foreign persons, including funds passed through to media companies and not included in the agency's income statement.

(2) *Telecommunications.* For jointly provided (basic) services, use receipts from foreign persons for messages or leased lines originating abroad, and payouts to foreign persons for messages or leased lines originating in the United States.

(3) *Performing arts, sports, and other live performances, presentations, and events.* Fees are defined net of allowances for expenses.

(4) *Employment agencies and temporary help supply services.* Receipts and payments should include any funds for compensation of workers carried on the payroll of the agency or supply service, as well as agency fees.

* * * * *

[FR Doc. 88-23225 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 173**

[Docket No. 83F-0020]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sodium Polyacrylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium polyacrylate as a mineral scale inhibitor in cane sugar and beet sugar evaporators. This action responds to a petition filed by Calgon Corp.

DATES: Effective October 7, 1988; written objections and requests for a hearing by November 7, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 173.73(a) effective October 7, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Catherine J. Bailey, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of February 15, 1983 (48 FR 6778), FDA announced that a petition (FAP 3A3699) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that 21 CFR Part 173 be amended to provide for the safe use of sodium polyacrylate as a mineral scale inhibitor in cane sugar and beet sugar evaporators.

FDA has evaluated data in the petition and other relevant material. Based on this evaluation, the agency concludes that the proposed use is safe, and that the regulations in Subpart A of 21 CFR Part 173 should be amended by adding a new § 173.73.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 am and 4 pm, Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before November 7, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the

regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 am and 4 pm, Monday through Friday.

List of Subjects 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 173 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. New § 173.73 is added to Subpart A to read as follows:

§ 173.73 Sodium polyacrylate.

Sodium polyacrylate (CAS Reg. No. 9003-04-7) may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is produced by the polymerization of acrylic acid and subsequent hydrolysis of the polyacrylic acid with an aqueous sodium hydroxide solution. As determined by a method entitled "Determination of Weight Average and Number Average Molecular Weight of Sodium Polyacrylate", which is incorporated by reference in accordance with 5 U.S.C. 552(a), the additive has—

(1) A weight average molecular weight of 2,000 to 2,300; and

(2) A weight average molecular weight to number average molecular weight ratio of not more than 1.3. Copies of the

method are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HRR-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(b) The additive is used to control mineral scale during the evaporation of beet sugar juice or cane sugar juice in the production of sugar in an amount not to exceed 3.6 parts per million by weight of the raw juice.

Dated: September 30, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-23204 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Bureau of Personnel

22 CFR Part 20

[108.873]

Retirement; Benefits for Certain Former Spouses

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On June 10, 1988 (53 FR 21854), the Department of State issued its proposed rule regulating sections 831, 832, and 833 of the Foreign Service Act of 1980, as amended, by Pub. L. 100-238. The proposed rule set forth definitions and procedures for providing retirement benefits, survivor benefits, and access to health insurance for certain former spouses of Foreign Service employees whose divorces occurred before February 15, 1981.

EFFECTIVE DATE: June 7, 1988.

FOR FURTHER INFORMATION CONTACT: Gertrude L. Wieckoski, (202) 647-9315.

SUPPLEMENTARY INFORMATION: The Department has received three comments on the proposed rule and all three commentators focussed on the draft rule's definition of "former spouse" and suggested changes in the wording of that definition, in order to prevent the disqualification of Foreign Service employees in AID, USIA, or the Staff Corps of the Department of State.

The commentators noted that the proposed rule could be interpreted to require that a former spouse's marriage last for five years during which the employee was a participant in the Foreign Service Retirement System, as

an additional qualifying requirement over and above the requirements that the marriage last 10 years of which five years occurred while the employee was a member of the Foreign Service. The commentators contend that an appropriate reading of Pub. L. 100-238 need not require that employee participation in the Foreign Service Retirement System last for five years, nor that any period of participation occur during the marriage. Rather, they believe that the participation requirement should be deemed to have been met in any case where the employee became a participant at any time, and either retired from the Foreign Service Retirement System or is now a participant in that System.

In reviewing the legislative history of participation rules for the Foreign Service Retirement System, the Department noted three statutory changes that mandatorily extended Foreign Service retirement participation to groups of Foreign Service employees who had previously been Civil Service Retirement participants. In 1968, Pub. L. 90-494 brought USIA Foreign Service employees into the retirement system. Public Law 93-426 did the same for AID Foreign Service employees. Public Law 94-350 extended coverage to certain Foreign Service Staff employees by eliminating a requirement that they serve 10 years before becoming participants in the Foreign Service Retirement System.

Many of the former spouses divorced before 1981 were married to AID, USIA, or Staff Corps Foreign Service employees during periods prior to extension of Foreign Service retirement participation to those employees. In some cases, the marriages lasted until many years after the employee's formal participation in the retirement system began. In other cases the marriage ended shortly after the statutory change that made the employee a participant. In still other cases, the marriage ended before the employee became a participant.

If the existing proposed rule were applied to these cases, the result would be to disqualify from benefits many former spouses solely on the basis that their marriages ended less than five years after the employees became participants. Former spouses who had served overseas for extensive periods of time, and who had thereby lost the opportunity to work and generate their own retirement income, and who would otherwise qualify for the benefits of Pub. L. 100-238 would be arbitrarily divided into qualifying and non-qualifying spouses.

The Department believes that such a course of action would serve no public purpose and would be inconsistent with Congressional intent, both with regard to Pub. L. 100-238, and with respect to the earlier statutes which extended Foreign Service participation to AID, USIA, and Staff Corps employees.

All three of those laws gave full credit in the Foreign Service Retirement System, at Foreign Service accumulation rates to employees for their prior service. None of those statutes imposed any requirements that new participants serve any length of time as participants in order to claim Foreign Service retirement benefits. New participants under these statutes could and did, in some cases, retire immediately after becoming formal participants.

Under these circumstances, there appears to be no justification for a requirement that former spouses of these employees demonstrate that they were married to the employee during his or her participation in the Foreign Service Retirement System. Instead, the purposes of the law are fully met if the person seeking benefits can demonstrate that the employee did become a participant in the Foreign Service Retirement System, even if that act occurred after the dissolution of the marriage.

Accordingly, the final rule modifies the definition of former spouse to clarify the requirements. The new definition of a qualified former spouse is that he or she "was married to such person at least 10 years during service which is creditable under this chapter with at least five years occurring while the employee was a member of the Foreign Service."

There were no other comments on the proposed rule and there are no other changes in the final rule.

List of Subjects in 22 CFR Part 20

Retirement, Pensions, Foreign Service.

For reasons set out in the preamble, 22 CFR Part 20 is added to Subchapter B as follows:

PART 20—BENEFITS FOR CERTAIN FORMER SPOUSES

- Sec.
- 20.1 Definitions.
- 20.2 Funding.
- 20.3 Qualifications.
- 20.4 Retirement benefits.
- 20.5 Survivor benefits.
- 20.6 COLA.
- 20.7 Waiver.
- 20.8 Effect on other benefits.
- 20.9 Application procedure.

Authority: 22 U.S.C. 3901 *et seq.*

§ 20.1 Definitions.

As used in this part, unless otherwise specified, the following have the meaning indicated:

"COLA" means cost-of-living adjustment in annuity.

"Creditable service" or "service" means employment or other periods that are counted under sections 816, 817, or 854 in determining retirement benefits.

"Disability annuitant" means a participant in FSRDS or FSPS entitled to a disability annuity under section 808 of the Act or Subchapter V, Chapter 84, Title 5 U.S.C., and a "disability annuity" means a Foreign Service annuity computed under those sections.

"FSRDS" means the Foreign Service Retirement and Disability System established by Subchapter I, Chapter 8, of the Act.

"FSPS" means the Foreign Service Pension System established by Subchapter II, Chapter 8, of the Act.

"Former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during service of the participant which is creditable under Chapter 8 of the Act with at least 5 years occurring while the employee was a member of the Foreign Service and who retired from the Foreign Service Retirement System.

"Full annuity" equals the annuity the former participant would be eligible to receive except for deductions made to provide survivor benefits or because of payment of a portion of the annuity to others.

"Participant" means a person who contributes to the Fund identified in § 20.2. Such person may participate in either FSRDS or FSPS.

"Principal" means a participant or former participant whose service forms the basis for a benefit for a former spouse under this part.

"Pro rata share", in the case of a former spouse of a participant or former participant, means the percentage obtained by dividing the number of months during which the former spouse was married to the participant during the creditable service of the participant by the total number of months of such creditable service. In the total period, 30 days constitutes a month and any period of less than 30 days is not counted. When making this calculation for a former spouse married to a participant during a period the participant earned extra service credit under section 817 of the Act, the number of months of such extra service credit earned during that period of the marriage shall be added to the total number of months of the marriage.

§ 20.2 Funding.

Benefits under this part are paid from the Fund maintained by the Secretary of the Treasury pursuant to section 802 of the Act but are not authorized to be paid except to the extent provided therefor. Appropriations for such Fund are authorized by section 821(a) of the Act.

§ 20.3 Qualifications.

To be eligible for retirement or survivor benefits under this part, a former spouse must—

(a) Have been a former spouse on February 14, 1981;

(b) After becoming a former spouse, not have remarried before attaining age 55;

(c) In the case of any retirement benefit under § 20.5; elect this benefit instead of any survivor annuity for which the former spouse may simultaneously be eligible under this or another retirement system for Government employees; and

(d) Submit an application to the Department of State by June 22, 1990, in accordance with § 20.9 unless that date is extended as authorized by that section. The deadline for submission of an application for survivor benefits under § 20.5 will be deemed to have been met if the former spouse submits an application for retirement benefits within the deadline.

§ 20.4 Retirement benefits.

(a) *Type of benefits.* (1) A former spouse who meets the qualification requirements of § 20.3 is entitled to a share of any Foreign Service annuity (other than a disability annuity) or any supplemental annuity computed under section 806(a), 823 or 824 of the Act to which the principal is entitled under FSRDS and to any Foreign Service annuity (other than a disability annuity) or annuity supplement computed under section 824 or 855 of the Act of 5 U.S.C. 8415 to which the principal is entitled under FSPS.

(2) A former spouse of a disability annuitant is entitled to a share of benefits to which the annuitant would qualify under paragraph (a) of this section, he or she not been disabled based on the actual age and service of the annuitant.

(b) *Share.* The share of a participant's benefits to which a qualified former spouse is entitled is—

(1) 50 percent of the benefits described in § 20.4(a) if the former spouse was married to the participant throughout the latter's creditable service; or

(2) A pro rata share of 50 percent of such benefits if the former spouse was

not married to the participant throughout such creditable service.

(c) *Reduction of benefits.* If retirement benefits of a principal are reduced because of reemployment, attainment of eligibility for Social Security benefits or for any other reason, the amount of the share payable to a former spouse is correspondingly reduced during the period of the reduction.

(d) *Commencement, Termination and Suspension.* (1) Entitlement to retirement benefits under this section (except for a former spouse of a disability annuitant) shall commence on the latter of—

(i) The day the principal becomes entitled to benefits described in § 20.4(a); or

(ii) December 22, 1987.

(2) Entitlement to retirement benefits under this section for a former spouse of a disability annuitant shall commence on the latter of—

(i) The date the principal would qualify for benefits (other than a disability annuity) described in § 20.4(a) on the basis of the principal's actual age and service;

(ii) The date the disability annuity begins; or

(iii) December 22, 1987.

(3) Entitlement to retirement benefits under this section shall terminate or be suspended on the earlier of—

(i) Last day of the month before the former spouse dies or remarries before attaining age 55;

(ii) Date benefits of the principal terminate or are suspended because of death, recall, reemployment, recovery from disability or for any other reason.

(4) Entitlement to benefits under this section shall be resumed for a former spouse, following their suspension, or the date they are resumed for the principal.

§ 20.5 Survivor benefits.

(a) *Type of benefits.* A former spouse who meets the eligibility requirements of § 20.3 is entitled to survivor benefits equal to one of the following; whichever is applicable:

(1) 55 percent of the full annuity to which the principal was entitled on the commencement or recomputation date of the annuity in the case of a principal who dies while in receipt of a Foreign Service annuity computed under section 806, 808, 823, 824, or 855 of the Act of 5 U.S.C. 8415;

(2) 55 percent of the annuity to which the principal was entitled at death in the case of a principal who dies while in receipt of a Foreign Service annuity computed under 5 U.S.C. 8452;

(3) 55 percent of the full annuity to which the principal would have been entitled if he or she retired (or returned

to retirement status) on the date of death computed—depending on the provision that would be used to compute an annuity for a surviving spouse of the principal—under section 806(a), 823, 824, or 855(b) of the Act of 5 U.S.C. 8415 and using the actual service of the principal, in the case of a principal who dies while in active service, including service on recall or reemployment while annuity is suspended or reduced; or,

(4) 55 percent of the full annuity computed under 5 U.S.C. 8413(b) that the principal could have elected to receive commencing on the date of death or, if later, commencing on the date the principal would have attained the minimum retirement age described in 5 U.S.C. 8412(h), in the case of a principal while entitled to a deferred annuity under 5 U.S.C. 8413(b), but before commencement of that annuity. A survivor annuity under this paragraph may not commence before the date the principal would have attained the minimum retirement age.

(b) *Effect of Election of Alternate Form Annuity.* If a principal elects an alternate form annuity under section 829 of the Act or 5 U.S.C. 8420a, survivor benefits for a former spouse under this section shall, nevertheless, be based on what the principal's annuity would have been had the principal not withdrawn retirement contributions in a lump sum.

(c) *Reduction Because of Receipt of Other Survivor Benefits.* If a former spouse is in receipt of a survivor annuity based on an election by the principal under section 806(f) or 2109 of the Act, the survivor benefits for the former spouse under this section shall be reduced on the effective date by the amount of such elected survivor annuity.

(d) *Commencement and Termination.* Entitlement to survivor benefits under this section—

(1) Shall commence on the latter of—

(i) The date the principal dies;

(ii) December 22, 1987; and

(2) Shall terminate on the last day of the month before the former spouse dies or remarries before attaining age 55.

§ 20.6 COLA.

(a) *Retirement Benefits.* A retirement annuity payable to a former spouse under § 20.4 is adjusted for cost-of-living increases under section 826 or 858 of the Act in the same manner as the annuity of the principal. The first such increase for a former spouse shall be prorated under the applicable section in the same way the first increase for the principal is adjusted, irrespective of whether the annuity to the former spouse commences on the same date as the annuity to the principal. If the benefit of

a former spouse is based in part on an annuity supplement payable to a principal under 5 U.S.C. 8421 which is not adjusted by COLA, then that portion of the benefit payable to a former spouse is not adjusted by COLA.

(b) *Survivor Benefits.* (1) Survivor annuities payable to a former spouse are adjusted for COLA under section 826 or 858 of the Act in the same manner as annuities are or would be adjusted for other survivors of the principal.

(2) A survivor annuity payable to a former spouse under § 20.5-1(A) shall be increased from its commencing date pursuant to paragraph (c)(2) of section 826 of the Act or 8462 of Title 5, U.S. Code, by all COLA received by the principal at death, irrespective of the date of death and in instances where death occurred prior to December 22, 1987, by all COLA that would have been paid to a survivor annuitant from the date of death until December 22, 1987.

(3) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(2) shall be prorated pursuant to 5 U.S.C. 8462(c)(4).

(4) The first increase to which a former spouse becomes entitled whose annuity is computed under § 20.5(a)(3) or

(5) Shall be prorated pursuant to paragraph (c)(1) of section 826 of the Act or 8462 of Title 5, U.S. Code.

§ 20.7 Waiver.

A former spouse entitled to an annuity under this part may decide to decline all or any part of the annuity for personal reasons. An annuity waiver shall be in writing and sent to the Retirement Division (PER/ER/RET), Department of State, Washington, DC 20520. A waiver may be revoked in writing at any time. Payment of the annuity waived prior to receipt by the Retirement Division of the renunciation may not be made.

§ 20.8 Effect on other benefits.

Payment to a former spouse under this part shall not impair, reduce, or otherwise affect benefits paid under the Act to the principal or other persons.

§ 20.9 Application procedure.

(a) *Submission of Application.* To be eligible for retirement or survivor benefits under this part, a former spouse must submit a properly executed and completed application to the Department of State by June 22, 1990 or, if an exception is made for compelling cause to this deadline, within 60 days following the date of the letter from the Department transmitting the application to the former spouse. The application must be delivered or mailed to the

Retirement Division (PER/ER/RET), Room 1251, Department of State, Washington, DC 20520.

(b) *Request for Application.* The Department of State has attempted to mail applications to all former spouses of whom it is aware that it believes may be eligible for benefits under this part. Any eligible former spouse who does not have an application at the time this part is published in the Federal Register (October 7, 1988) must communicate with the Department as soon as possible and request an application. Request may be in person or by mail to the address in § 20.9(a) or by telephoning the Retirement Division on area code 202-647-9315. A request by letter must include the typed or printed full name and current address of the former spouse.

It shall also give the dates of marriage and divorce or annulment that establish eligibility and fully identify the Foreign Service employee or former employee in question and state the agency of current or last employment.

(c) *Payment of Benefits Delayed.* Payment of benefits cannot be made to a former spouse until the application for benefits is approved by the Retirement Division of the Department. Upon such approval, benefits will be paid to an eligible former spouse retroactively, if necessary, back to the commencing date determined under this part.

July 19, 1988.

George S. Vest,

Director General of the Foreign Service and
Director of Personnel.

[FR Doc. 88-23142 Filed 10-6-88; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Minerals Management Service

30 CFR Part 206

43 CFR Part 3590

[AA-660-88-4133-02; Circular No. 2612]

Product Valuation; and Solid Minerals (Other Than Coal) Exploration and Mining Operations; Streamlining Amendments

AGENCY: Bureau of Land Management, Interior, and Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the provisions of 43 CFR Part 3590 concerning solid minerals exploration and mining operations to streamline and

clarify the existing regulations. The final rulemaking also eliminates duplication of regulations which are currently under the authority of the Minerals Management Service, and transfers a section dealing with product valuation to the title of the Code of Federal Regulations containing MMS regulations.

EFFECTIVE DATE: November 7, 1988.

ADDRESS: Any suggestions or inquiries should be sent to: Director (660), Bureau of Land Management, Room 3511, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: W. Vance Greer or Paul Politzer, (202) 343-7722.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing the revisions of 43 CFR Part 3590 was published in the Federal Register on January 26, 1988 (53 FR 2055) with a 60 day comment period. During the comment period comments were received from 6 sources, 4 from mining companies, 1 from a law firm and 1 from an individual. All the comments were given careful consideration and will be addressed in the preamble under the specific section relating to the comment.

The title of Group 3500 was revised to read, "Management of Solid Minerals Other Than Coal". The removal of the exclusion of oil shale from this title is done in order to allow existing oil shale leases to be governed by Part 3590 of Group 3500, even though oil shale cannot be leased under Part 3500.

Section 3590.0-5 Definitions.

Three comments were received on this section. One comment suggested that the terms "Service" and "Authorized Officer" be defined in this section. The comment was rejected because both terms have been defined at 43 CFR 3500.0-5 and were not defined in this Part to avoid repetition. However, the term "Service", where used in the text, has been changed to "Minerals Management Service" (MMS) in the final rulemaking to avoid possible confusion. Two comments were received regarding the definition of "Ultimate Maximum Recovery". Both comments wanted economic factors to be incorporated into the definition and the determination of ultimate maximum recovery. One comment also suggested that the definition was too general and should include qualifiers to allow for geologic conditions and mining methods. The same comment objected to the use of the term "standard industry operating practices" because the same practice may result in different recovery rates

depending on several variable factors. The comments were rejected because this rulemaking must retain a certain amount of flexibility in order to cover a wide variety of commodities and mining conditions. Geologic conditions, mining methods, economic factors and other variables affecting ultimate maximum recovery are to be addressed during the mine plan approval process. This procedure will retain the concept of ultimate maximum recovery, which is to avoid high grading and the loss of recoverable reserves, and will allow the operator and the authorized officer to consider any local factors.

Section 3590.1 Confidentiality of information.

One comment was received on this section. The comment was concerned that the rules no longer specifically stated that "commercial and financial information would be kept confidential" and also wanted a statement in the final rules which would protect information previously submitted if not stamped "confidential information" as required by the final rules. The comment was accepted in part. The final rules contain a statement that information previously submitted will be made public only in accordance with the Freedom of Information Act (FOIA). FOIA contains specific provisions regarding what will be held confidential, including the commercial and financial information of concern to the author of the comment. After careful consideration it was decided not to repeat the provisions of FOIA in the final rules, because the Department has regulations in 43 CFR Part 2 that ensure that information is released to the public only in accordance with FOIA.

Section 3590.2 Responsibility of the authorized officer.

Two comments were received on this section. One comment preferred "frequent inspections" in paragraph (a) to the proposed terminology which requires inspections to be conducted "at least quarterly", because it allowed more flexibility in scheduling inspections. The comment was rejected because the provision for quarterly inspections is a minimum and does not restrict the authorized officer if more inspections are needed to ensure compliance. Flexibility is not diminished because inspections may be scheduled any time during the quarter. One comment stated that paragraph (c), relating to air and water quality, was "a duplication of regulatory efforts by State and Federal environmental agencies" and suggested that the section be removed or qualified to reflect the

Bureau's role as one of coordination with State and Federal agencies having jurisdiction over air and water quality issues. In response to this comment the final rules in this subpart were revised to clarify BLM's role. The subsection was not removed, in order to ensure regulatory authority for the Bureau to monitor air and water provisions of NEPA and to enforce those requirements in the absence of other State and Federal agencies. The subsection was revised to require coordination with appropriate State and Federal agencies. Paragraph (d), also relating to air and water monitoring, was removed in response to this comment. Paragraph (h) was revised as a result of internal review to clarify that BLM is the agency having administrative jurisdiction over cases of mineral trespass.

Section 3592.1 Operating plans.

Four comments were received on this section. One comment suggested that subsection (a) be amended to specify "that a new operating plan is not needed every time a new lease is mined" in cases where a single operation may contain more than one lease. The final rulemaking is amended in response to this comment to make it clear that an operation plan may include more than one permit or lease. One comment on paragraph (c) opposed the "minimum" requirements of the mine plan and suggested that this section be reworded to read "my or all of the following". This part of the comment was rejected because these are the minimum requirements and issues required by law and policy to be addressed before a mine plan can be approved. The comment also questioned the requirement that certain environmental data be submitted when there would be no surface disturbance on public lands. The final rulemaking is amended to show that these requirements apply only to Federal and Indian leases, licenses, and permits. The Bureau recognizes that different commodities and mining periods are involved and that there may be cases where some particular requirement may not apply. If this is the case the requirement must still be addressed by explaining why it is not applicable.

Two comments questioned the practicality and need for the amount of detail required in the mine plan submission, specifically citing the difficulty in trying to forecast ultimate maximum recovery. One comment stated that it was unrealistic to "force the operator to adhere to narrow forecasted mining sequences, tonnage and grade requirements". The comments were rejected because the information

required is necessary for the Bureau to make determinations regarding conservation of the resource and to ensure that the public interests are served. Mine plan modifications are to be used to correct those segments of a mine plan where new information indicates that the best estimate at time of plan approval was incorrect.

One comment suggested that the plan modification requirements were unrealistic because plans sometimes change frequently and it was impractical to wait for BLM approval. Modifications are intended to reflect changes and/or oversights that could have a major impact on resource recovery, environmental concerns, or protection of other resources on the lease. It is not intended to monitor normal production scheduling or the frequent movement of equipment. If a modification is necessary and time is a factor, verbal approval of the modification may be given by the authorized officer and the documentation submitted later.

All comments received on the reduction in the number of mine plan copies to be submitted from 5 copies to 2 copies were favorable. However, internal review indicated that 2 copies were inadequate when the surface management agency was other than the BLM. The final rulemaking is amended to require 3 copies when this is the case. Paragraph (c)(3) was also amended to clarify that each copy of the plan needs to be accompanied by only one copy of the map or aerial photograph required by this section.

Section 3594.1 Ultimate maximum recovery.

Two comments were received on this section. One comment stated that paragraph (a) was vague and indicated that the requirement relating to protection of other resources required "procognitive ability". The comment was rejected because the concept of ultimate maximum recovery, as stated in the regulations and discussed in this preamble under § 3590.0-5, is clearly stated. Mining operations are expected to achieve maximum recovery of the reserves giving due consideration to environmental concerns, mining conditions and other factors which may affect such recovery. If other resources are contained within the area to be mined, the BLM is required to consider the potential loss of those resources during the mine plan approval process. It is not considered procognitive to study the information available and make a determination regarding what measures, if any, should be taken to

protect other resources. One comment stated that information required in paragraph (b) was covered in § 3593.1 relating to submission of geologic and geophysical data. The final rulemaking is revised to clarify that this requirement pertains to new or different information discovered during the course of mining.

Section 3594.5 Minerals soluble in water; brines; minerals taken in solution.

One comment was received on this section. The comment suggested that this section be reorganized for clarity and the last part revised to specify conditions where mineral solutions could be taken within 500 feet of the lease boundary. The final rulemaking is revised in response to this comment by dividing the section into 3 subsections and amending the language to show that brines may be taken within 500 feet of the lease boundary if approval is granted by the authorized officer.

A new paragraph (d) was added to clarify that procedures used to allocate brine production from a combination of Federal and non-Federal lands would be addressed in the mine plan.

Section 3595.1 Surface openings.

At the request of a comment, a new paragraph (c) has been added to this section to clarify the requirements for the abandonment of wells used in solution mining or brine extraction.

Section 3596.1 Milling.

One comment was received on this section, suggesting that the term "approved practices" should be reinstated and the phrase "established requirements" deleted. The comment was accepted because the term more accurately expresses the intended meaning and the final rulemaking is amended accordingly.

Section 3597.1 Books of account.

One comment was received on this section opposing the provisions permitting BLM to request and receive any production data not submitted to MMS. The most apparent concern was the amount of confidential data associated with royalty reporting to MMS. The final rulemaking is amended in paragraph (b) to read "production reporting" instead of "royalty reporting", to provide that only production data and not royalty data may be required by BLM, because MMS is responsible for royalty accounting. The Bureau retains authority to request and receive production data if there is a demonstrated need to verify production and the information needed is not being submitted to MMS.

Section 3597.2 Value basis for royalty computation.

One comment was received on this section suggesting that BLM retain this authority because the "rule should not be left open to unclear future rulings or arbitrary changes by the MMS". The comment was rejected because this authority has been delegated by the Secretary to MMS. To make this clear, this section has been redesignated without amendment in this final rulemaking as 30 CFR 206.301, in the regulations of the Minerals Management Service.

The principal author of this final rulemaking is W. Vance Greer of the Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement(s) contained in this final rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0142.

List of Subjects in 30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

List of Subjects in 43 CFR Part 3590

Administrative practice and procedure, Indian lands—mineral resources, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, Part 206 of Title 30 of the Code of Federal Regulations and Part 3590, Group 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal

Regulations are amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

September 30, 1988.

1. The authority citation for 30 CFR Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*

PART 206—[AMENDED]

§ 206.301 [Redesignated from 3597.2]

§ 3597.2 Redesignated as § 206.301

2. Section 3597.2 is redesignated as 30 CFR 206.301.

3. The title of Group 3500 is revised to read:

Group 3500—Management of Solid Minerals Other Than Coal

4. Part 3590 is revised to read:

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

Note: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal leases which specifically refer to the United States Geological Survey, Minerals Management Services or the Conservation Division. These leases and agreements also often specifically refer to various officers as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR Part 231 or specific sections thereof. Those references shall now mean the Bureau of Land Management or Minerals Management Service, as appropriate.

Subpart 3590—Solid Minerals (Other than Coal) Exploration and Mining Operations—General

Sec.

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Subpart 3591—General Obligations of Lessees, Licensees and Permittees

3591.1 General obligations of lessees, licenses and permittees.

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Subpart 3592—Plans and Maps

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- 3594.1 Ultimate maximum recovery.
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Subpart 3595—Protection Against Mining Hazards

- 3595.1 Surface openings.
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Subpart 3596—Waste From Mining or Milling

- 3596.1 Milling.
 3596.2 Disposal of waste.

Subpart 3597—Production Records

- 3597.1 Books of account.
 3597.2 Audits.

Subpart 3598—Inspection and Enforcement

- 3598.1 Inspection of underground and surface conditions; surveying, estimating and study.
 3598.2 Issuance of orders.
 3598.3 Service of notices, instructions and orders.
 3598.4 Enforcement orders.
 3598.5 Appeals.

Authority: The Mineral Leasing Act as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291-293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriation Act (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

Subpart 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations—General**§ 3590.0-1 Purpose.**

The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing,

development, mining and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize or correct damage to the environment—land, water and air—and avoid, minimize or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

§ 3590.0-2 Policy.

The regulations in this part are administered under the direction of the Director, Bureau of Land Management.

§ 3590.0-3 Authority.

Authority for carrying out the regulations in this part is set out in § 3500.0-3 of this title, unless otherwise noted.

§ 3590.0-5 Definitions.

As used in this part, the term: (a) "Established requirements" means applicable law and regulations, lease, license or permit terms, conditions and special stipulations; approved mine or exploration plan requirements; and orders issued by the authorized officer.

(b) "General mining order" means a formal numbered order issued in a rulemaking procedure by the Department of the Interior which implements the regulations in this part and applied to mining and related operations.

(c) "Lessee" means any person, partnership, association, corporation or municipality that holds a mineral lease, through issuance or assignment, in whole or part, which lease is subject to the provisions of this part.

(d) "Licensee" means any person, partnership, association, corporation or municipality that holds a mineral license, through issuance or assignment, in whole or part, which license is subject to the provisions of this part.

(e) "Permittee" means any person, partnership, association, corporation or municipality that holds a mineral prospecting permit, through issuance, or assignment, in whole or part, which permit is subject to the provisions of this part.

(f) "Operator" means anyone authorized to conduct operations pursuant to the regulations in this part.

(g) "Reclamation" means the measures undertaken to bring about the necessary reconditioning or restoration of lands or water affected by exploration, mining, on-site processing operations or waste disposal in a manner which, among other things, will

prevent or control on-site or offsite damage to the environment.

(h) "Ultimate maximum recovery" means that all portions of a leased Federal mineral deposit shall be mined, based on standard industry operating practices. The requirement to achieve ultimate maximum recovery does not in any way restrict the authorized officer's authority to ensure the conservative of the mineral resource and protection of the other resources.

§ 3590.0-7 Scope.

The regulations in this Part govern operations for the discovery, testing, development, mining, reclamation, and processing of all minerals under lease, license or permit issued for Federal lands under the regulations in Group 3500 of this title or Part 3140 of this title. For operations, involving the extraction of hydrocarbon from tar sands or oil shale by in-situ methods utilizing boreholes or wells, Part 3160 of this title is applicable. These regulations also govern operations for all minerals on Indian tribal lands and allotted Indian lands leased under 25 CFR Parts 211 and 212. Further, when the regulations in this part related to matters included in 25 CFR Part 215 or 216 the regulations in this Part shall be considered as supplemental and the regulations in 25 CFR Part 215 or 216 shall govern to the extent of any inconsistencies.

§ 3590.1 Confidentiality of information.

(a) Information obtained under this Part and on file shall be open for public inspection and copying during regular office hours, pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 522(b)) and Part 2 of this title. Upon termination of a lease, license, or permit, whether by expirations of its terms or otherwise, such information shall become available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the lessee, licensee or permittee by marking each page of documents submitted with the words "Confidential Information" at the top of the page. All pages so marked shall be in a separate volume(s) from other portions of the submitted materials. All information not marked, "Confidential Information" shall be available for public inspection, except that information previously submitted and not marked will be available for public inspection, only in accordance with the Freedom of Information Act.

(c) Confidential and privileged information obtained from a lessee under this part on any Indian lease shall be available only to the Tribe or allotted

Indian lessor, their designated agent or authorized Department of the Interior officials. Such information shall not be made available to any other party without the express authorization of the Tribe or allotted Indian lessor.

§ 3590.2 Responsibility of the authorized officer.

The authorized officer shall regulate prospecting, exploration, testing, development, mining, processing operations, and reclamation authorized under this part. The duties of the authorized officer include, but are not limited to, the following:

(a) Approval of operating plans and plan modifications after preparation of appropriate environmental analyses. Prior to approving a plan, the authorized officer shall consult with the agency having jurisdiction over the lands with respect to the surface protection and reclamation aspects of such plan.

(b) Inspection, at least quarterly, of leased, licensed or permitted lands where operations for discovery, testing, development, mining, reclamation, or processing of minerals are being conducted.

(c) Inspection and regulation of such operations for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits or nonmineral resources affected by the operations.

(d) Inspecting exploration and mining operations to determine the adequacy of water management and pollution control measures taken for the protection of the quality of surface and groundwater resources and the adequacy of emission control measures taken for the protection of air quality. Such inspection shall be conducted as necessary and shall be fully coordinated with all State and Federal agencies having jurisdiction.

(e) Requiring operators to conduct operations in compliance with established requirements, including the law, regulations, the terms and conditions of the lease, license or permit, the requirements of approved exploration or mining plans, notices and orders and special stipulations.

(f) Obtaining the records of production of minerals and other information as necessary in order to verify that production reported to the Minerals Management Service for royalty purposes is an accurate accounting of minerals produced.

(g) Acting on applications for suspension of operations and production filed under § 3503.3 of this title and terminating such suspensions when conditions warrant. The authorized

officer shall, upon request, assist in review of applications for suspension of operations and production on Indian lands which are filed under the provisions of 25 CFR Parts 211 and 212.

(h) Upon receipt of a written request for cessation or abandonment of operations, inspecting the operations and determining whether they are in compliance with established requirements. The authorized officer shall, in accordance with applicable procedures, consult with, or obtain the concurrence of the State or Federal agency having jurisdiction over the lands with respect to the surface protection and reclamation requirements of the lease, license or permit and the exploration or mining plan.

(i) Acting on any mineral trespass on Federal or Indian lands in accordance with Part 9230 of this title. The surface managing agency, if other than the BLM, shall be notified of any mineral trespass and the planned enforcement action.

(j) Implementing General Mining Orders and issuing other orders, making determinations and providing concurrence and approvals as necessary to implement or assure compliance with the regulations in this part. Any verbal orders, approvals or concurrences shall be promptly confirmed in writing.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

§ 3591.1 General obligations of lessees, licensees and permittees.

(a) Operations for the discovery, testing, development, mining or processing of minerals shall conform to the established requirements.

(b) The surface of lease, license or permit lands shall be reclaimed in accordance with established requirements. Lessees, licensees or permittees shall take such action as may be needed to avoid, minimize or repair:

- (1) Waste and damage to mineral-bearing formations;
- (2) Soil erosion;
- (3) Pollution of the air;
- (4) Pollution of surface or ground water;
- (5) Damage to vegetation;
- (6) Injury to or destruction of fish or wildlife and their habitat;
- (7) Creation of unsafe or hazardous conditions;
- (8) Damage to improvements; and
- (9) Damage to recreation, scenic, historical and ecological values of the lands.
- (10) Damage to scientifically significant paleontological and archaeological resources.

(c) All operations conducted under this part shall be consistent with Federal

and State water and air quality standards.

(d) Inundations, fires, fatal accidents, accidents threatening damage to the mine, the lands or the deposits, or conditions which could cause water pollution shall be reported promptly to the authorized officer. The notice required by this section shall be in addition to any notice or reports required by 30 CFR Part 56 or 57, or other applicable regulations.

§ 3591.2 Forms and reports.

The operator shall submit production and royalty forms and reports to the Minerals Management Service in accordance with 30 CFR Parts 216 and 218.

Subpart 3592—Plans and Maps

§ 3592.1 Operating plans.

(a) Before conducting any operations under any lease(s), license(s), or permit(s), the operator shall submit to the authorized officer an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease, license or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations on Federal or Indian lease(s), license(s), or permits. The authorized officer shall consult with any other agency involved, and shall promptly approve the plans or indicate what additional information is necessary to conform to the provisions of the established requirements. No operations shall be conducted except as provided in an approved plan.

(b) The exploration plan shall be submitted in accordance with mineral specific regulations in Group 3500 of this title (See Subparts 3512, 3522, 3532, 3542, 3552 and 3562) and in accordance with 25 CFR 216.6 for Indian lands.

(c) The lessee/operator shall submit 2 copies of the mining plan to the authorized officer for approval. An additional copy shall be submitted if the surface managing agency is other than the BLM. The mining plan shall contain, at a minimum, the following:

- (1) Names, addresses and telephone numbers of those responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered, names and addresses of lessees, Federal lease serial numbers and names and addresses of surface and mineral owners of record, if other than the United States;

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted;

(3) A copy of a suitable map or aerial photograph showing the topography, the area covered by the lease(s), the name and location of major topographic and cultural features and the drainage plan away from the affected area;

(4) A statement of proposed methods, of operating, including a description of the surface or underground mining methods, the proposed roads, the size and location of structures and facilities to be built, mining sequence, production rate, estimated recovery factors, stripping ratios and number of acres in the Federal or Indian lease(s), license(s), or permit(s) to be affected;

(5) An estimate of the quantity and quality of the mineral resources, proposed cutoff grade and, if applicable, proposed blending procedures for all leases covered by the mining plan;

(6) An explanation of how ultimate maximum recovery of the resource will be achieved for the Federal or Indian lease(s). If a mineral deposit, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval;

(7) Appropriate maps and cross sections showing:

(i) Federal or Indian lease boundaries and serial numbers;

(ii) Surface ownership and boundaries;

(iii) Locations of existing and abandoned mines;

(iv) Typical structure cross sections;

(v) Location of shafts or mining entries, strip pits, waste dumps, and surface facilities; and

(vi) Typical mining sequence, with appropriate timeframes;

(8) A narrative which addresses the environmental aspects associated with the proposed mine which includes, at a minimum, the following:

(i) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters;

(ii) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(iii) A description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources and hazards to public health and safety; and

(9) A reclamation schedule and the measures to be taken for surface reclamation of the Federal or Indian lease(s), license(s), or permit(s) that will ensure compliance with the established requirements. In those instances in which the lease requires the revegetation of an area affected by operations, the mining plan shall show:

(i) Proposed methods of preparation and fertilizing the soil prior to replanting;

(ii) Types and mixtures of shrubs, trees or tree seedlings, grasses or legumes to be planted; and

(iii) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees or tree seedlings, or combinations of grasses and trees;

(10) The method of abandonment of operations on Federal or Indian lease(s), license(s), and permit(s) proposed to protect the unmined recoverable reserves and other resources, including the method proposed to fill in, fence or close all surface openings which are a hazard to people or animals. Abandonment of operations also is subject to the provisions of Subpart 3595 of this title; and

(11) Any additional information that the authorized officer deems necessary for approval of the plan.

(d)(1) Approved exploration and mining plans may be modified at any time to adjust to changed conditions or to correct an oversight. To obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modification(s) shall not be implemented unless previously approved by the authorized officer.

(2) The authorized officer may require a modification to the approved exploration or mining plan if conditions warrant.

(e) If circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator/lessee shall not, however, perform any operation except under an approved plan.

§ 3592.2 Maps of underground workings and surface operations.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the authorized officer. All maps shall be appropriately

marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the authorized officer, vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys and certified by a professional engineer, professional land surveyor or other professionally qualified person. Accurate copies of such maps or reproductive material or prints thereof shall be furnished by the operator to the authorized officer when and as required.

§ 3592.3 Production maps.

(a) The operator shall prepare maps which show mineral production from the leased lands. All excavations in each separate bed or deposit shall be shown in such a manner that the production of minerals for any royalty period can be accurately ascertained. Maps submitted for in situ or solution mining shall show pipelines, meter locations, or other points of measurement necessary for production verification. Production maps shall be submitted to the authorized officer at the end of each royalty reporting period or on a schedule determined by the authorized officer. As appropriate or required by the authorized officer, production maps also shall show surface boundaries, lease boundaries and topography, including subsidence resulting from mining activities.

(b) In the event of failure of the operator to furnish the maps required by this section, the authorized officer shall employ a licensed mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator/lessee.

(c) If the authorized officer believes any map submitted by an operator/lessee is incorrect, the authorized officer may cause a survey to be made, and if the survey shows the map submitted by the operator/lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator/lessee.

Subpart 3593—Bore Holes and Samples

§ 3593.1 Core or test hole cores, samples, cuttings.

(a) The operator/lessee shall submit promptly to the authorized officer a signed copy of records of all core or test holes made on the lands covered by the lease, license or permit. The records shall be in a form that will allow the position and direction of the holes to be

located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, gas or unusual conditions. Copies of analyses of all samples shall be transmitted to the authorized officer as soon as obtained or as requested by the authorized officer. The operator/lessee shall furnish the authorized officer a detailed lithologic log of each drill hole and all other in-hole surveys or other logs produced. The core from test holes shall be retained by the operator/lessee for 1 year or such other period as may be directed by the authorized officer, and shall be available for inspection by the authorized officer. The authorized officer may cut such cores and receive samples as appropriate. Upon the request of the authorized officer, the operator/lessee shall furnish samples of strata, drill cuttings and mill products.

(b) Surface drill holes for development or holes for prospecting shall be abandoned to the satisfaction of the authorized officer by cementing and/or casing or by other methods approved in advance by the authorized officer and in a manner to protect the surface and not endanger any present or future underground operation or any deposit of oil, gas, other mineral substances or aquifer.

(c) Logs and analyses of development holes shall not be required unless specifically requested by the authorized officer. Drill holes may be converted to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality of pressure of ground water or mine gases. Such conversion may be required by the authorized officer or requested by the operator/lessee and approved by the authorized officer. Prior to the termination of the lease, license or permit term, all surveillance wells shall be reclaimed unless the surface owner assumes responsibility for reclamation of such surveillance wells. The transfer of liability for reclamation shall be approved in writing by the authorized officer.

(d) When drilling on lands with potential for encountering high pressure oil, gas or geothermal formations, drilling equipment shall be equipped with blowout control devices acceptable to the authorized officer.

Subpart 3594—Mining Methods

§ 3594.1 Ultimate maximum recovery.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural

resources and the protection and preservation of the environment—land, water and air. All shafts, main exits and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the authorized officer.

(b) New geologic information obtained during mining regarding any mineral deposits on the lease shall be fully recorded and a copy of the record furnished to the authorized officer, if requested.

§ 3594.2 Support pillars.

Sufficient pillars shall be left during first mining to ensure the ultimate maximum recovery of mineral deposits prior to abandonment. All boundary pillars shall be 50 feet thick unless otherwise specified in writing by the authorized officer. Boundary and other main pillars shall be mined only with the written consent or by order of the authorized officer.

§ 3594.3 Boundary pillars and isolated blocks.

(a) If the ore on adjacent lands subject to the regulations in this part has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the operator's/lessee's adjacent operations, and if no other hazards exist, the operator/lessee shall, on the written order of the authorized officer, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the authorized officer determines that such ore can be mined without undue hardship to the operator/lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to the regulations in this part and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions of paragraphs (a) and (b) of this section.

§ 3594.4 Development on leased lands through adjoining mines as part of a mining unit.

An operator/lessee may mine a leased tract from an adjoining underground mine on lands privately owned or

controlled or from adjacent leased lands, under the following conditions:

(a) The only connections between the mine on lands privately owned or controlled and the mine on leased lands shall be the main haulageways, the ventilationways and the escapeways. Substantial concrete frames and fireproof doors that can be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The authorized officer may waive any of the requirements of this paragraph when it is determined such waiver will not conflict with the regulations in 30 CFR Part 57 and will promote maximum recovery of the ore.

(b) Free access for inspection of said connecting mine on lands privately owned or controlled shall be given at any reasonable time to the authorized officer.

(c) If an operator/lessee is operating on a lease through a mine on lands privately owned or controlled does not maintain the mine access in accordance with the safety regulations, operations on the leased lands may be stopped by order of the authorized officer.

§ 3594.5 Minerals soluble in water; brines; minerals taken in solution.

(a) In mining or prospecting deposits of sodium, potassium or other minerals soluble in water, all wells, shafts, prospecting holes and other openings shall be adequately protected with cement or other suitable materials against the coursing or entrance of water. The operator/lessee shall, when ordered by the authorized officer, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water.

(b) On leased, license or permit lands containing brines, due precaution shall be exercised to prevent the deposit from becoming diluted or contaminated by the mixture of water or valueless solution.

(c) Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of lands contained in the approved mine plan without the written permission of the authorized officer.

(d) Any agreement necessary for allocation of brine production shall be made a part of the mine plan.

Subpart 3959—Protection Against Mining Hazards

§ 3595.1 Surface openings.

(a) The operator/lessee shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the lease, license or permit. Before abandonment of operations, all openings, including water discharge points, shall be closed to the satisfaction of the authorized officer.

(b) Reclamation or protection of surface areas no longer needed for operations will commence without delay. The authorized officer shall designate such areas where restoration or protective measures, or both shall be taken.

(c) Wells utilized for operations involving solution mining or brine extraction shall be abandoned in accordance with the approved mine plan.

§ 3595.2 Abandonment of underground workings.

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance, written approval of the authorized officer.

Subpart 3596—Waste From Mining or Milling

§ 3596.1 Milling.

The operator/lessee shall conduct milling operations in accordance with the established requirements. The operator/lessee shall use due diligence in the reduction, concentration or separation of mineral substances by mechanical or chemical processes or other means so that the percentage of salts, concentrates, or other mineral substances recovered and waste generated shall be in accordance with the approved practices.

§ 3596.2 Disposal of waste.

The operator/lessee shall dispose of all wastes resulting from the mining, reduction, concentration or separation of mineral substances in accordance with the terms of the lease, approved mining plan, applicable Federal, State and local law and regulations and the directions of the authorized officer.

Subpart 3597—Production Records

§ 3597.1 Books of account.

(a) Operators/lessees shall maintain records which show a correct account of all ore and rock mined, of all ore put

through the processing plant, of all mineral products produced and of all ore and mineral products sold. The records shall show all relevant quality analyses of ore mined, processed or sold and the percentage of the mineral products recovered or lost.

(b) Production records shall be made available for examination by the authorized officer during regular business hours. For the purpose of production verification, the authorized office may request, and the operator/lessee shall submit a copy of any portion of the production records not submitted to the Minerals Management Service as part of the operator's/lessee's production reporting.

§ 3597.2 Audits.

(a) An audit of the operator's/lessee's accounts and books may be made or directed by the Minerals Management Service in accordance with the provisions of Title 30 of the Code of Federal Regulations.

(b) An audit of the operator's/lessee's accounts and production records by the service may be requested by the authorized officer if, during the process of verification of production, it is determined that an irregularity exists between reported production and production calculated by the authorized officer. Such audits shall be requested when the irregularity cannot be resolved between the operator/lessee and the authorized officer.

Subpart 3598—Inspection and Enforcement

§ 3598.1 Inspection of underground and surface conditions; surveying, estimating and study.

Operators/lessees shall provide means at all reasonable hours, either day or night, for the authorized officer to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or other methods of prospecting, exploration, testing, development, processing and handling; to determine the volumes, types, and composition of wastes generated; to determine the adequacy of measures for minimizing the amount of such wastes and the measures for treatment and disposal of such wastes; to determine reclamation procedures and progress; production records; environmental concerns; and to determine whether the operator/lessee is in compliance with established requirements.

§ 3598.2 Issuance of orders.

Orders and notices issued by the authorized officer shall be mailed by certified mail, return receipt requested,

to the operator/lessee at the address furnished in the exploration or mining plan. The operator/lessee shall notify the authorized officer of any change of address or operator/lessee name.

§ 3598.3 Service of notices, instructions and orders.

The operator/lessee shall be considered to have received all notices and orders that are mailed by certified mail and a receipt received by the authorized officer. Verbal orders and notices may be given to officials at the mine but shall be confirmed in writing in accordance with § 3598.2 of this title.

§ 3598.4 Enforcement orders.

(a) If the authorized officer determines that an operator/lessee has failed to comply with established requirements, and such noncompliance does not threaten immediate, serious or irreparable damage to the environment, the mine or deposit being mined, or other valuable mineral deposits or other resources, the authorized officer shall serve a notice of noncompliance upon the operator and lessee by delivery in person or by certified mail, return receipt requested. Failure of the operator/lessee to take action in accordance with the notice of noncompliance shall be grounds for the authorized officer to issue an order to cease operations or initiate legal proceedings to cancel the lease under § 3509.4 of this title, or, for Indian leases, recommend to the Bureau of Indian Affairs that action be taken in accordance with 25 CFR Part 211.

(b) A notice of noncompliance shall specify how the operator/lessee has failed to comply with established requirements, and shall specify the action which shall be taken to correct the noncompliance and the time limits within which such action shall be taken. The operator/lessee shall notify the authorized officer when noncompliance items have been corrected.

(c) If, in the judgment of the authorized officer, the failure to comply with the established requirements threatens immediate, serious or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the authorized officer may, either in writing or orally with written confirmation, order the cessation of operations without prior notice.

§ 3598.5 Appeals.

Orders or decisions issued under the regulations in this Part may be appealed as provided in Part 4 of this title. Orders issued under § 3598.4(c) of this title shall

be effective during the pendency of any appeal.

[FR Doc. 88-23154 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Amendments to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kansas as modifications to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to definitions, permit application requirements, coal exploration, performance standards, and lands unsuitable for surface mining and were submitted to maintain consistency with the Federal requirements.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program, can be found in the January 21, 1981 *Federal Register* (46 FR 5892). Subsequent actions concerning proposed amendments are codified at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendments

On January 26, 1988, (Administrative

Record No. KS-407) Kansas proposed to amend its program by revising the Kansas Administrative Regulations (K.A.R.) to incorporate by reference certain Federal regulations set out in 30 CFR Parts 701 through 817 as they existed on July 1, 1987. The regulations revised by this amendment are K.A.R. 47-2-75, Definitions; K.A.R. 47-3-42, Application for Mining Permit; K.A.R. 47-7-2, Coal Exploration; K.A.R. 47-9-1, Performance Standards; K.A.R. 47-10-1, Underground Mining; and K.A.R. 47-12-4, Land Unsuitable for Surface Mining.

Kansas proposed these revisions to satisfy the requirements of 30 CFR 916.16 as codified on May 26, 1987 (52 FR 19502). The revisions also respond to a June 9, 1987, letter (Administrative Record No. KS-395) from OSMRE that required Kansas to amend its program to protect historic properties in accordance with the revised Federal regulations promulgated on February 10, 1987 (52 FR 4244).

The Director announced receipt of the proposed amendments in the March 24, 1988, *Federal Register* (53 FR 9669) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No comments were received by April 25, 1988, the close of the comment period. The public hearing scheduled for April 18, 1988, was not held because no one requested an opportunity to testify.

III. Director's Findings

For the reasons discussed below, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendments submitted by Kansas on January 26, 1988, meet the requirements of SMCRA and 30 CFR Chapter VII as they existed on July 1, 1987. However, the Director will require further changes in the future as a result of Federal regulatory revisions promulgated after July 1, 1987.

1. K.A.R. 47-2-75 Definitions

With certain previously approved exceptions, this amendment incorporates by reference 30 CFR 700.5, 701.5, and 705.5 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date, including the definitions of

"affected area" to the extent that it categorically excludes all public roads with substantial (more than incidental) public use (51 FR 41952, November 20, 1986), "road" (50 FR 7273, February 21, 1985), and "support facilities" (50 FR 28189, July 10, 1985), all in 30 CFR 701.5.

The Kansas action also removes the definition of "adverse physical impact" and incorporates the revised Federal definition of "previously mined area" at 30 CFR 701.5 (52 FR 17528, May 8, 1987), thus meeting the requirements of 30 CFR 916.16(a)(1).

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds K.A.R. 47-2-75 as revised to be no less stringent than SMCRA and no less effective than the Federal regulations in effect as of that date.

2. K.A.R. 47-3-42 and 47-10-1 Permit Application Requirements

With certain previously approved exceptions, the amendments to K.A.R. 47-3-42(a) (surface mining) and 47-10-1 (underground mining) incorporate by reference 30 CFR 701.11, 773.12, 773.13, 773.15, 773.19, 778.13, 778.14, 778.15, 778.16, 778.17(a), 778.18, 778.21, 778.22, 779.4, 779.11, 779.12, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25, 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.22, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, 780.37, Part 783, Part 784, 785.13, 785.17, 785.18, 785.20, 785.21, and 785.22 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Suspended regulations include 30 CFR 701.11(e)(1) and (2) insofar as they may be read to retain the regulatory authority's discretion to grant an exemption from reconstruction of existing structures after making the findings of 30 CFR 773.15 (44 FR 67942, November 27, 1979); certain mapping requirements at 30 CFR 783.25(a)(3), (a)(8), and (a)(9) (45 FR 51548, August 4, 1980); 30 CFR 779.21(a) and 783.21(a) to the extent that they require soil surveys for lands that are not prime farmland (45 FR 51548, August 4, 1980); and 30 CFR 780.21(f) and 784.14(e) insofar as they limit the regulatory authority's ability to require an applicant to address life-of-

the-mine hydrologic impacts in the probable hydrologic consequences (PHC) determination (51 FR 41961, November 20, 1986).

By incorporating the provisions of the November 20, 1986, suspension notice concerning 30 CFR 780.21(f) and 784.14(e), Kansas has complied with 30 CFR 916.16(a)(2) and (a)(11), which required the State to clarify that it has the authority to require a permit applicant to prepare a PHC determination addressing expected hydrologic consequences over the entire life of the mine, not just the term of the permit. The incorporation by reference of 30 CFR 733.15, 779.12, 780.31, 783.12 and 784.17 also satisfies those requirements of the Director's June 9, 1987, letter concerning permit application requirements and permit findings pertaining to the protection of historic properties.

Since the amendment incorporates language identical to that of the corresponding Federal regulations in effect on July 1, 1987, the Director finds revised K.A.R. 47-3-42(a) and 47-10-1 to be no less effective than the Federal regulations in effect as of that date.

3. K.A.R. 47-7-2 Coal Exploration

With certain previously approved exceptions, the amendment to K.A.R. 47-7-2 incorporates by reference 30 CFR 772.11, 772.12, 772.13, 772.14, and 772.15 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Suspended provisions include the phrase "during which 250 tons or less of coal will be removed and which will substantially disturb the natural land surface" in 30 CFR 772.11(a), and the notice and application content requirements of 30 CFR 772.11(b)(3) and 772.12(b)(3) to the extent that they do not require submission of a narrative description of the exploration area (51 FR 41961, November 20, 1986).

By excluding these suspended provisions, Kansas has satisfied 30 CFR 916.16(a)(3), which required the State to amend its program to require that (1) all persons planning to conduct coal exploration submit a notice of intent regardless of whether the exploration activity would substantially disturb the natural land surface, and (2) all notices of intent and applications for coal exploration include a narrative describing the exploration area.

Also, by incorporating the February 10, 1987, revisions to 30 CFR 772.12, Kansas has complied with OSMRE's June 9, 1987, letter requiring Kansas to adopt additional coal exploration permit application requirements to ensure the

proper treatment of historic properties during coal exploration.

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds revised K.A.R. 47-7-2 to be no less stringent than SMCRA and no less effective than the Federal regulations in effect as of that date.

4. K.A.R. 47-9-1 Performance Standards

With certain previously approved exceptions, this amendment to K.A.R. 47-9-1 (c) and (d) incorporates by reference 30 CFR Parts 816 and 817 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date. Regulations suspended in whole or in part as of that date include 30 CFR 816.46(b)(2) and 817.46(b)(2), 816.49(a)(3) and 817.49(a)(3), 816.49(a)(5)(i) and 817.49(a)(5)(i), 816.49(a)(8) and 817.49(a)(8), 816.49(a)(9) and 817.49(a)(9), 816.81(a) and 817.81(a), 816.81(c)(2) and 817.81(c)(2), 816.83 and 817.83, 816.84(b)(2) and 817.84(b)(2), 816.89(d) and 817.89(d), 816.116(b)(3)(ii) and 817.116(b)(3)(ii), 816.116(c)(2) and 817.116(c)(2), 816.116(c)(4) and 817.116(c)(4), and 816.133(d) and 817.133(d). A complete explanation of the extent to which these rules are suspended and the effect of such suspension can be found in the November 20, 1986, *Federal Register* (51 FR 41961). In addition, the regulations governing roads at 30 CFR 816.150, 817.150, 816.151, and 817.151 are suspended in their entirety, as recorded in the February 21, 1985, *Federal Register* (50 FR 7275).

All these suspensions resulted from decisions of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (C.A. 79-1144, D.D.C. 1984 and 1985). However, on January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit upheld a number of the suspended rules (*National Wildlife Federation versus Hodel*, C.A. 84-5743), which OSMRE reinstated on June 9, 1988 (53 FR 21764). The reinstated rules include 30 CFR 816.49(a)(9) and 817.49(a)(9), which allow the retention of underwater highwalls in permanent impoundments; §§ 816.81(c)(2) and 817.81(c)(2), which allow the construction of coal mine waste piles with a compaction that does not attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method; and §§ 816.83 and 817.83, which permit the construction of coal mine waste piles using lifts greater than 2 feet in thickness.

As codified at 30 CFR 916.16 (a)(4), (a)(6) and (a)(7), on May 26, 1987,

OSMRE required that Kansas amend its program to be no less effective than these Federal rules as modified by the suspensions. With the lifting of the suspensions and reinstatement of the rules discussed in the preceding paragraph, these requirements are now unnecessary and will be removed in this rulemaking. However, since Kansas is incorporating these rules as they were in effect on July 1, 1987, the suspensions will remain a part of the Kansas program unless and until the State further amends its program to remove them.

By excluding the possibility that 30 CFR 816.81(a) and 817.81(a), as incorporated by reference, could be interpreted as allowing the end-dumping or side-dumping of coal mine waste (see the previously referenced November 20, 1986, suspension notice), Kansas has complied with 30 CFR 916.16(a)(5), which required that the State amend its program to prohibit the construction of coal refuse piles using end- or side-dumping.

By incorporating the November 18, 1986, revisions to 30 CFR 816.106 and 817.106, as explained at 51 FR 41734, Kansas has complied with 30 CFR 916.16(a)(8), which required that the State amend its program to remove provisions allowing the incomplete elimination of highwalls on previously mined areas where there would be no adverse physical impact on preexisting highwalls.

By excluding the suspended portion of 30 CFR 816.116(c)(2) and 817.116(c)(2), Kansas has complied with 30 CFR 916.16(a)(9), which required the State to specify that revegetation success shall be determined by measurements taken during the last two years of the responsibility period.

However, by excluding 30 CFR 816.133(d) and 817.133(d) only to the extent to which they were suspended on November 20, 1986, Kansas has not fully complied with 30 CFR 916.16(a)(10), which requires that the State remove these paragraphs in their entirety. As explained in Finding 8 of the May 26, 1987, *Federal Register* (52 FR 19506), the amendment approved in that notice deleted the previous incorporation by reference of 30 CFR 785.18, which, under certain conditions, authorizes the granting of a permit containing a variance from the requirement to return mined lands to approximate original contour (AOC) and establishes procedural and monitoring requirements relating thereto.

However, in that amendment, Kansas failed to remove the incorporation by reference of companion rules 30 CFR

816.133(d) and 817.133(d), which establish criteria for AOC variances. Since 30 CFR 785.16(f) provides that a regulatory authority may grant variances only if it has promulgated specific rules in accordance with 30 CFR 875.16, the Director disapproved the Kansas regulations incorporating 30 CFR 816.133(d) and 817.133(d) and required Kansas to remove them. In the amendment now under consideration, Kansas does so only to the extent that they would apply a non-steep slope mining operations. Therefore, the Director is retaining his disapproval of these provisions and is revising 30 CFR 916.16(a)(10) to extend the compliance date and require that Kansas either remove these provisions in their entirety or amend its program to include corresponding permitting requirements no less effective than those contained in 30 CFR 785.16.

Kansas has also amended K.A.R. 47-9-1 (c)(2) and (c)(3) to include specific time and distance requirements for replacement of topsoil and for backfilling and grading to ensure that reclamation occurs contemporaneously with mining in a timely fashion. These requirements are identical to those previously adopted by Kansas as a policy statement and approved by OSMRE on December 31, 1987 (52 FR 49396). The Director finds that these standards are consistent with the corresponding Federal regulations at 30 CFR 816.100 and 817.100, which specify that the regulatory authority may establish schedules that define contemporaneous reclamation.

Since, except as discussed above, the amendment incorporates language identical to that of the corresponding Federal regulations in effect as of July 1, 1987, the Director finds that revised paragraphs (c) and (d) of K.A.R. 47-9-1 are no less effective than the Federal regulations in effect on that date.

5. K.A.R. 47-12-4 Land Unsuitable for Surface Mining

With certain previously approved exceptions, this amendment to K.A.R. 47-12-4 incorporates by reference 30 CFR 761.5, 761.11, 761.12, 762.5, 762.11, 762.13, 762.14, 764.13, 764.15, 764.17, 764.19, 764.21, 764.23 and 764.25 as they were in effect on July 1, 1987. The amendment thus excludes provisions suspended as of that date, including 30 CFR 764.15 (a)(3) and (a)(8) insofar as they authorized the regulatory authority to suspend the processing of lands unsuitable petitions where it finds there is no real or foreseeable potential for surface coal mining operations to occur (51 FR 41961, November 20, 1986).

The definition of "valid existing rights" at 30 CFR 761.5 is also suspended to the extent that it incorporates the "takings" test and expands the "needed for and adjacent" test to include lands for which the applicant had not obtained the necessary property rights as of August 3, 1977. As explained in the November 20, 1986, *Federal Register*, suspending these portions of the definition has the effect of leaving in place the methods used to determine the existence of valid existing rights prior to promulgation of the September 14, 1983, version of the definition (51 FR 41954). These methods include the "good-faith all permits" test and the original, unexpanded "needed for and adjacent" test. In addition, the unsuspended portion of the 1983 definition recognizes "continually created" rights with respect to areas that come under protection after August 3, 1977.

By revising its program as described above, Kansas has complied with the requirements of 30 CFR 916.16 (a)(12), (a)(13), and (a)(14) as well as the pertinent requirements of the June 9, 1987, letter from OSMRE concerning protection of historic properties. Specifically, in addition to revising the definition of "valid existing rights" as discussed above, Kansas has amended its definition of "cemetery" to include all areas where human bodies are interred, extended the protection of section 522(e) of SMCRA to all properties listed on the National Register of Historic Places (not just publicly owned sites), and deleted provisions authorizing suspension of the processing of petitions to declare lands unsuitable for mining where there is no likelihood of mining.

Since the amendment incorporates the same language as the Federal regulations in effect as of July 1, 1987, the Director finds revised K.A.R. 47-12-4 to be no less stringent than SMCRA and no less effective than the Federal regulations in effect on that date.

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA, 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas program. The U.S. Environmental Protection Agency (EPA) concurred in the amendments, while none of the other agencies notified offered any comment.

In accordance with 30 CFR 732.17(h)(4), comments were also solicited from the State Historic Preservation Officer; however, none were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Kansas on January 26, 1988 with the exception of the incorporation by reference of 30 CFR 816.133(d) and 817.133(d), as discussed below and in Finding 4. To the extent required by 30 CFR 732.17(h)(11)(ii), the EPA has concurred in this approval (Administrative Record No. KS-410).

As explained in the findings, with the exception of the provisions of paragraph (a)(10) concerning AOC variances, the requirements of 30 CFR 916.16 either are now unnecessary or are satisfied by this amendment. Therefore, the Director is removing paragraphs (a)(1) through (a)(9) and (a)(11) through (a)(14) and is revising paragraph (a)(10) of this section as discussed in Finding 4.

Also, all disapprovals listed in 30 CFR 916.12 correspond to Federal provisions suspended by notice published in the November 20, 1986, *Federal Register* or, in the case of paragraphs (a)(7) and (a)(8), to the revised Federal rules concerning the protection of historic properties promulgated on February 10, 1987. Since this amendment incorporates the Federal rules in effect on July 1, 1987, it excludes provisions and interpretations suspended as of that date and includes the historic properties rule and previous Federal rules reinstated by the referenced suspension notice. Therefore, with the exception of that portion of paragraph (a)(4) pertaining to AOC variances as discussed in Finding 4, the Director is removing the disapprovals listed in 30 CFR 916.12.

The Federal regulations at 30 CFR Part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA. This approval is contingent upon the State's promulgation and approval of the proposed regulations in a form identical to that submitted for OSMRE's review with the exception of typographical errors.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a regulatory impact analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 3, 1988.

Robert E. Boldt,
Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for Part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.12 is revised to read as follows:

§ 916.12 State program provisions and amendments disapproved.

(a) The following provisions of the Kansas Administrative Regulations (K.A.R.) as submitted on April 23, 1986, and January 26, 1988, are disapproved: Paragraphs (c) and (d) of K.A.R. 47-9-1 insofar as they incorporate by reference 30 CFR 816.133(d) and 817.133(d), which establish criteria for variances from

approximate original contour requirements.

(b) [Reserved]

3. A new paragraph (i) is added to § 916.15 to read as follows:

§ 916.15 Approval of regulatory program amendments.

(i) With the exception of those provisions disapproved in § 916.12(a), the following amendments to the Kansas Administrative Regulations (K.A.R.), as submitted to OSMRE on January 26, 1988, are approved effective October 7, 1988. Revisions to K.A.R. 47-2-75 (Definitions), 47-3-42(a) (Application for Mining Permit), 47-7-2 (Coal Exploration), 47-9-1 (c) and (d) (Performance Standards), 47-10-1 (Underground Mining), and 47-12-4 (Land Unsuitable for Surface Mining) to incorporate by reference the corresponding Federal regulations as they were in effect on July 1, 1987, and to include specific contemporaneous reclamation standards.

4. Section 916.16 is revised to read as follows:

§ 916.16 Required regulatory program amendments.

(a) By September 1, 1989, Kansas shall (1) submit revisions to K.A.R. 47-9-1 (c) and (d) to remove the incorporation by reference of 30 CFR 816.133(d) and 817.133(d), (2) submit revisions to K.A.R. 47-3-42 to include provisions no less effective than those of 30 CFR 785.16, or (3) otherwise propose to amend its program to be no less effective than the Federal regulations with respect to variances from approximate original contour.

(b) [Reserved]

§ 916.20 [Amended]

5. The authority citation for § 916.20 is removed.

[FR Doc. 88-23214 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Approval of Amendment to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing the approval of a proposed amendment submitted by the Commonwealth of Kentucky as a modification to its permanent regulatory program (hereinafter referred to as the

Kentucky Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a resubmittal of the provisions of House Bill 869 and supporting documents. The amendment provides that orders of the Secretary of the Natural Resources and Environmental Protection Cabinet ("the Cabinet") are appealable to the circuit court of the county where the violation occurred rather than to the Circuit Court of Franklin County.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general background of the Kentucky program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 *Federal Register* (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and proposed program amendments are identified at 30 CFR 917.11, 30 CFR 917.13, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Discussion of Proposed Amendment

By letter dated April 29, 1986 (Administrative Record No. KY-703), Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky program as contained in Kentucky House Bill 869. That bill, passed by the General Assembly with an effective date of July 15, 1986, amended the Kentucky Revised Statutes (KRS) at 350.032 to provide that final orders of the Cabinet are appealable to the circuit court of the county where the violation occurred rather than to the Circuit Court of Franklin County.

On June 9, 1986, OSMRE notified Kentucky that, prior to approval of the provisions of House Bill 869, it must submit a plan of implementation (Administrative Record No. KY-709). Kentucky responded with a statement of anticipated costs, a description of available resources and a discussion of organizational and programmatic consequences (Administrative Record

No. KY-710). On July 18, 1986, OSMRE published its disapproval of the amendment in the *Federal Register* (51 FR 26002-26008) based on the fact that no provision was made for additional funding and/or staffing for the additional workload that would likely result from its implementation (Administrative Record No. KY-718). However, because the Commonwealth did not repeal the legislation, operators did in fact file appeals in local circuit courts and those courts accepted and heard such appeals.

Therefore, by letter dated May 28, 1987 (Administrative Record No. KY-738), Kentucky resubmitted the provisions of House Bill 869 for reconsideration by OSMRE. In addition, Kentucky submitted information to justify the resubmittal on the grounds that the workload resulting from the *de facto* implementation of House Bill 869 was much less than anticipated. On July 13, 1987, OSMRE published a notice in the *Federal Register* (51 FR 26158-26159) announcing receipt of the resubmitted amendment and inviting public comment on its adequacy. The public comment period ended August 12, 1987. Four comments were received. The public hearing scheduled for August 7, 1987, was not held because no one requested an opportunity to testify.

On January 22, 1988, OSMRE requested that, since actual workload data was available, the Cabinet submit data on all relevant appeals filed in local circuit courts as a result of passage of House Bill 869 (Administrative Record No. KY-788). On February 4, 1988, Kentucky provided information of the number and status of local appeals; the resources, travel time and associated costs expended by the Cabinet on such appeals; decisions enjoining the Cabinet from enforcing sections of the law, and the time delays experienced in the appeals process (Administrative Record No. KY-791). On March 7, 1988, OSMRE published a notice in the *Federal Register* (53 FR 7212-7213) reopening the public comment period on the proposed amendment and informing the public of the availability of the additional materials. The public comment period closed April 6, 1988.

III. Director's Findings

As detailed in the July 18, 1986 *Federal Register* (51 FR 20006-20007), and explained in the section of this notice entitled "Discussion of Proposed Amendment", the Director found that the provisions of House Bill 869, which changes the venue for appeals, were not inconsistent with the corresponding Federal provisions of section 526(e) of

SMCRA. This paragraph of the Federal statute states that actions of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. However, the Director disapproved the proposed amendment because the Commonwealth lacked the funding and legal resources necessary to implement its provisions, and thus did not meet the criteria for approval of State programs and program amendments at section 503(a)(3) of SMCRA and 30 CFR 732.15(d) and 732.17(h)(10). In making this decision, the Director stated that the amendment could be resubmitted at such time as additional staffing and funding were provided to assure the effective implementation of the amendment.

On May 28, 1987, Kentucky resubmitted the amendment with supplementary information justifying the resubmittal based on workload, funding and organizational considerations. Kentucky stated that the number of appeals originally anticipated had not materialized, specifically, that only two percent of all final orders had been appealed in the year following passage versus the twenty-five percent predicted in June 1986. Therefore, earlier estimates of the resources necessary for effective implementation are inaccurate. Kentucky indicated that the additional resource demands would be met by a reorganization designed to more efficiently use existing legal staff and a program amendment to eliminate the automatic scheduling of preliminary hearings for every notice, order and penalty issued, which the Director is reviewing in a parallel rulemaking action.

This information tentatively indicates that Kentucky will have the funding and legal resources necessary to implement the provisions of House Bill 869 and that the amendment is therefore consistent with 30 CFR 732.15(d) and section 503(a)(3) of SMCRA. However, the Director notes that the resource savings resulting from elimination of the automatic scheduling of preliminary hearings are highly uncertain, as is the number of appeals likely to be filed once the amendment is actually approved. Therefore, since the Director is unable to conclusively determine whether the Commonwealth has the resources necessary to effect this amendment in a manner which provides timely enforcement of the State program over the long term, he is approving this amendment on a two-year trial basis.

In addition, he is requiring that, two months prior to the 1990 meeting of the

Kentucky General Assembly, the Cabinet submit a report on the effect of the implementation of this amendment. The report shall contain a complete listing of all appeals entered in local circuit courts, their status, the resources expended by the Cabinet in defense of each appeal, and the results of each action. The report shall also include information on any time delays experienced and a listing of all preliminary decisions that have failed to exhaust the administrative process.

IV. Public and Agency Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies. No substantive comments were received.

Public Comments

As detailed in the section of this notice entitled "Discussion of Proposed Amendment," OSMRE twice provided opportunity for public comment on this amendment.

Comments in support of the amendment were submitted by Harold P. Quinn, Jr. on behalf of the National Coal Association, Charles J. Baird on behalf of the Baird and Baird, P.S.C., and Bill K. Caylor on behalf of the Kentucky Coal Association. These commenters argued that House Bill 869 should be approved since it is in accordance with section 526 of SMCRA, which provides that the designation of courts of competent jurisdiction is a matter of State law. The Director agrees that the amendment is consistent with section 526 of SMCRA, but, as discussed in the findings, this section of SMCRA is not the sole basis for his decision.

Thomas J. FitzGerald submitted comments opposing the amendment on behalf of the Kentucky Resources Council. He stated that implementation of House Bill 869 would result in uneven and inconsistent enforcement of the Kentucky program. As noted in the July 18, 1986 *Federal Register* (51 FR 26006-26007), the Director agrees that implementation could result in inconsistent judicial decisions. While this inconsistency may be an undesirable result of decentralization, it does not render House Bill 869 inconsistent with SMCRA, which requires that appeals of Federal actions be filed in the Federal district courts for the area in which the mine is located, a requirement analogous to that of House Bill 869.

Mr. FitzGerald argued that the change of venue for appeals would place an

additional strain on the legal resources of the Commonwealth and would adversely affect performance. Mr. Fitzgerald also stated that, to the extent that the change of venue to local circuit courts results in a failure to provide adequate enforcement, the proposed amendment fails to meet the requirements of section 521 of SMCRA. The commenter further argued that the additional materials submitted by Kentucky demonstrate that the State does not have the capability of carrying out the provisions of SMCRA and meeting its purposes, and that the decentralization of judicial review has not enabled the Cabinet to obtain timely decisions on appeals of enforcement actions and has resulted in cases filed in advance of proper exhaustion of administrative remedies. As discussed previously, the State has submitted actual data indicating that it will have the funding and legal resources necessary to implement the provisions of House Bill 869. The Director therefore does not agree with the commenter's assertion that Kentucky has demonstrated that it lacks the capability to carry out the provisions of SMCRA and meet its purposes. However, the Director does have some reservations concerning the level of funding and legal resources that may be needed to properly implement House Bill 869 once it is fully approved. Therefore, he is approving this amendment solely on a trial basis. To obtain permanent approval, the State must fully document and demonstrate its ability to effectively implement the provisions of the amendment without adversely affecting enforcement of its permanent regulatory program.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment, as submitted on May 28, 1987, and contained in House Bill 869, on a trial basis until December 31, 1990. In addition, the Director is requiring that Kentucky submit a report detailing the impact of implementation on agency resources and the judicial review process. The report shall be submitted two months prior to the 1990 session of the General Assembly of Kentucky and shall contain information on the number of appeals filed in circuit courts, their outcome and status, and the funding and staff resources allocated to defending the Cabinet in these actions. The report shall also include information on the number of decisions enjoining the Cabinet from enforcing sections of the law, delays encountered in the appeals process, and the number of appeals heard in which the applicant for review

failed to exhaust all administrative remedies.

Following receipt of this report and solicitation of public comment, the Director will determine whether House Bill 869 should be approved on a permanent basis. If the report and the Director's evaluation indicate that deficiencies exist, the Director will require that Kentucky take such corrective actions as are necessary to ensure that the State program is no less stringent than SMCRA and no less effective than the Federal regulations and that it is properly implemented. If these actions are not taken, the approval will not be renewed.

The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision and remove the previous disapproval of this amendment as codified at 30 CFR 917.17(c). This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

Executive Order 12291 and Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 3, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of the Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (z) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

(z) The following amendment to the Kentucky Revised Statutes (KRS), as resubmitted to OSMRE on May 28, 1987, is approved effective October 7, 1988: Revisions to KRS 350.032 as contained in House Bill 869 to provide that final orders of the Secretary of the Natural Resources and Environmental Protection Cabinet are appealable to the circuit court of the county where the violation occurred rather than to the Circuit Court of Franklin County. This approval will expire on December 31, 1990.

3. Section 917.16 is amended by adding paragraph (a) to read as follows:

§ 917.16 Required regulatory program amendments.

(a) No later than two months prior to the start of the 1990 session of the Kentucky General Assembly, Kentucky shall submit to OSMRE a report detailing the effects of the implementation of House Bill 869. The report shall include information on the number of final orders of the Cabinet appealed to the local circuit courts, their status and outcome, and the funding and staff resources allocated to represent the Commonwealth in these proceedings. In addition, the report shall include information on the number of decisions enjoining the Cabinet from enforcing sections of the law, time delays encountered in the appeal process, and whether applicants for judicial review have exhausted all available administrative remedies.

§ 917.17 [Amended]

4. Section 917.17 is amended by removing paragraph (c).

[FR Doc. 88-23213 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-05-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1150

Practice and Procedures for Compliance Hearings

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (A&TBCB or Board) at its July 13, 1988, meeting adopted amendments to its Practice and Procedures for Compliance Hearings. The provisions of the Agency's Practice and Procedures for Compliance Hearings were amended to (1) improve the orderly function of the informal complaint resolution process and pre-hearing process; (2) conform the designation of Chair to the recent amendments to the Statement of Organization and Procedures and the Authorities and Delegations; (3) to provide for successive numerical designations; and (4) to reflect the current address of the A&TBCB. The amendments to the Practice and Procedures for Compliance Hearings are being published so that all affected persons will be fully informed about procedures governing the compliance process and hearings.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth Stewart, Acting General Counsel, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, NW., Suite 501, Washington, DC 20036-3894, (202) 653-7834 (voice or TDD). This document is available at the above address on cassette for persons with visual impairments.

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the A&TBCB adopted regulations to ensure compliance with standards issued under the Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.*

The changes passed by the ATBCB at the July 13, 1988, meeting are as follows:

(1) All references to the designation "Chairperson" are amended to read "Chair."

(2) The designated office address is amended to reflect the current address of the A&TBCB.

(3) Copies of complaints shall be sent to all interested parties by regular mail instead of certified mail, return receipt requested.

(4) Sections 1150.53 and 1150.54 contained in the text are renumbered to read §§ 1150.52 and 1150.53 respectively.

List of Subjects in 36 CFR Part 1150

Administrative practice and procedures, Buildings, Handicapped.

Accordingly, 36 CFR Part 1150 is amended as set forth below.

By vote of the Board on July 13, 1988.

William J. Tangye,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons stated in the preamble, Chapter XI of Title 36, Code of Federal Regulations, is amended as follows:

PART 1150—[AMENDED]

1. The authority citation for Part 1150 is revised to read as follows:

Authority: 29 U.S.C. 792, as amended.

2. Section 1150.4 is revised to read as follows:

§ 1150.4 Definitions.

"A&TBCB" means the Architectural and Transportation Barriers Compliance Board.

"Agency" means Federal department, agency, or instrumentality as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an agency official authorized to represent the agency. It includes any executive department or independent establishment in the Executive Branch of the government, including wholly owned government corporations, and any establishment in the legislative or judicial branch of the government, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

"Alteration" means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

"Architectural Barriers Act" means the Architectural Barriers Act of 1968,

Pub. L. 90-480, as amended, 42 U.S.C. 4151 *et seq.*

"Building or facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

"Chair" means the Chair of the A&TBCB.

"Complaint" means any written notice of an alleged violation, whether from an individual or organization, or other written information reasonably indicating to the Executive Director a violation of the standard.

"Construction" means any section of a new building or an addition to an existing building.

"Day" means calendar day.

"Executive Director" means the A&TBCB Executive Director.

"Extraordinary repair" means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

"Judge" means an Administrative Law Judge appointed by the A&TBCB and assigned to the case in accordance with either section 3105 or 3314 of Title 5, United States Code.

"PER" means Provisional Expedited Relief.

"Respondent" means a party answering the citation, including PER Citation.

"Section 502 of the Rehabilitation Act" means section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, as amended.

"Standard" means any standard for accessibility and usability prescribed under the Architectural Barriers Act.

3. Section 1150.12 is revised to read as follows:

§ 1150.12 Complainants.

(a) Any person may submit a complaint to the A&TBCB alleging that a building or facility does not comply with applicable standards issued under the Architectural Barriers Act. Complaints must be in writing and should be sent to: Executive Director, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, Suite 501, Washington, DC 20036-3894.

A complaint form is available at the above address. Complaints may, but need not, contain (1) the complainant's name and where he/she may be reached, (2) the facility or building and, if known, the funding agency, and (3) a brief description of the barriers. A complaint form is available at the above address.

(b) The A&TBCB shall hold in confidence the identity of all persons

submitting complaints unless the person submits a written authorization otherwise.

(c) The A&TBCB shall give or mail to the complainant a copy of these regulations.

(d) A complainant is not a party to the proceedings as a matter of course, but may petition the judge to participate under § 1150.13.

(e) The A&TBCB shall send the complainant a copy of the final order issued by the judge. The complainant has standing to obtain judicial review of that order.

4. Section 1150.41 is revised to read as follows:

§ 1150.41 Informal resolution.

(a) The A&TBCB immediately shall send copies of complaints to all interested agencies and persons. In addition, the A&TBCB shall apprise any person who might become a party to compliance proceedings of the alleged instances of noncompliance and afford him/her a reasonable opportunity to respond or submit pertinent documents.

(b) The Executive Director or his/her designee shall seek the cooperation of persons and agencies in obtaining compliance and shall provide assistance and guidance to help them comply voluntarily.

(c) Upon request of the Executive Director, interested agencies or persons, including, but not limited to, occupant agencies, recipients of assistance, and lessors, shall submit to the Executive Director or his/her designee timely, complete, and accurate reports concerning the particular complaint. Reports shall be completed at such times, and in such form containing all information as the Executive Director or his/her designee may prescribe.

(d) The Executive Director, or his/her designee, shall have access during normal business hours to books, records, accounts and other sources of information and facilities as may be pertinent to ascertain compliance. Considerations of privacy or confidentiality asserted by an agency or person may not bar the Executive Director from evaluating such materials or seeking to enforce compliance. The Executive Director may seek a protective order authorizing the use of allegedly confidential materials on terms and conditions specified by the judge.

(e) Complaints should be resolved informally and expeditiously, by the interested persons or agencies. If compliance with the applicable standards is not achieved informally or an impasse concerning the allegations of compliance or noncompliance is

reached, the Executive Director will review the matter, including previous attempts by agencies to resolve the complaint, and take actions including, but not limited to, surveying and investigating buildings, monitoring compliance programs of agencies, furnishing technical assistance, such as standard interpretation, to agencies, and obtaining assurances, certifications, and plans of action as may be necessary to ensure compliance.

(f) All actions to informally resolve complaints under paragraphs (a) through (e) of this section shall be completed within one hundred eighty (180) days after receipt of the complaint by all affected agencies and persons. A complaint shall be deemed informally resolved if the person or agencies responsible for the alleged violation either:

(1) Demonstrates to the Executive Director that no violation has occurred, or

(2) Corrects the violation, or

(3) Agrees in writing to implement specific compliance action within a definite time agreed to by the Executive Director, or

(4) Are timely implementing a plan for compliance agreed to by the Executive Director.

No later than ten (10) days after the determination of the one hundred eighty (180) day period, the Executive Director shall either issue a citation under § 1150.42, or determine in writing that a citation will not be issued at that time and the reasons that it is considered unnecessary.

(g) A determination not to issue a citation shall be served in accordance with § 1150.23 on all interested agencies and persons upon whom a citation would have been served if it had been issued. Except as otherwise provided in paragraph (i) of this section, the failure of the Executive Director to take action within the ten (10) day period after termination of the one hundred eighty (180) day informal resolution period shall not preclude the Executive Director from taking action thereafter.

(h) Nothing in paragraphs (a) through (g) of this section shall be construed as precluding the Executive Director before the termination of the one hundred eighty (180) day informal resolution period from:

(1) Issuing a citation if it is reasonably clear that informal resolution cannot be achieved within that time, or

(2) Determining not to issue a citation if it is reasonably clear that compliance can be achieved or that issuance of a citation is not otherwise warranted.

(i) At any time after the expiration of one hundred ninety (190) days after receipt of the complaint by all affected agencies and persons, any person or agency receiving a copy of the complaint, or the complainant, may serve a written request on the Executive Director to issue a citation or determination not to proceed within thirty (30) days. If the Executive Director fails to serve a written response within thirty (30) days of receipt of such a request, the complaint shall be deemed closed.

5. Section 1150.51 is revised to read as follows:

§ 1150.51 Who presides.

(a) A judge assigned to the case under section 3105 or 3344 of Title 5, United States Code (formerly section 11 of the Administrative Procedure Act), shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

(b) The A&TBCB shall, in writing, promptly notify all parties and participants of the assignment of the judge. This notice may fix the time and place of hearing.

(c) Pending his/her assignment, the responsibilities, duties, and authorities of the judge under these regulations shall be executed by the A&TBCB, through the Chair or another member of the A&TBCB designated by the Chair. A Board member shall not serve in this capacity in any proceeding relating to the member, his/her Federal agency, or organization of which he/she is otherwise interested.

§ 1150.53 [Redesignated as § 1150.52]

6. Section 1150.53 is redesignated as § 1150.52:

§ 1150.54 [Redesignated as § 1150.53]

7. Section 1150.54 is redesignated as § 1150.53.

[FR Doc. 88-23052 Filed 10-6-88; 8:45 am]

BILLING CODE 6820-EP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400011A; FRL-3460-2]

Acid Blue 9; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting Acid Blue 9 (both the diammonium and the disodium

salts) from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act. By promulgating this rule, EPA is relieving facilities of their obligation to report on releases of C.I. Acid Blue 9 that occur during the 1988 calendar year, and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of Title III of SARA.

DATES: This rule is effective on October 7, 1988.

FOR FURTHER INFORMATION CONTACT: Renee Rico, Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, 401 M Street, SW., Mail Stop WH-562A, Washington, DC 20460, (800) 535-0202, In Washington, DC and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION:

I. Description of Petition and Regulatory History

The Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD) submitted to EPA a petition to delete C.I. Acid Blue 9, diammonium salt (CAS No. 2650-18-2) and C.I. Acid Blue 9, disodium salt (CAS No. 3844-45-9) from the 313 list of toxic chemicals. EPA received the petition on October 5, 1987. Following a review of the petition, EPA published a proposed rule in the *Federal Register* of April 12, 1988 (53 FR 12035), granting the petition and announcing the EPA's intention to delete C.I. Acid Blue 9. Upon a review of the petition and other information, EPA concluded that C.I. Acid Blue 9 did not meet the listing criteria related to acute human health effects, chronic human health effects, or environmental toxicity. These criteria for listing chemicals are contained in section 313(d) of Title III of SARA. The proposed rule contains additional information on the petition process under section 313 of Title III of SARA, as well as a detailed summary of the Agency's review of the petition.

EPA received one comment on the proposed rule; the commenter (ETAD) supported EPA's proposal to delete C.I. Acid Blue 9. Based upon its evaluation of the ETAD petition, available toxicity and exposure information, and the comment submitted, EPA reaffirms its determination that C.I. Acid Blue 9 does not meet any of the criteria listed in section 313(d). Therefore, EPA is deleting C.I. Acid Blue 9 from the list of chemicals subject to reporting under section 313 of Title III of SARA.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of \$100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of C.I. Acid Blue 9. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: September 23, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65 (a) and (b) are amended by removing the entire entry for C.I. Acid Blue 9, diammonium salt, and C.I. Acid Blue 9, disodium salt under paragraph (a) and removing the entire CAS No. entries for 2650-18-2 and 3844-45-9 under paragraph (b).

[FR Doc. 88-23179 Filed 10-6-88; 8:45 am]

BILLING CODE 6580-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 625

[Docket No. 80736-8197]

Summer Flounder Fishery

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement conservation and management measures as prescribed in the Fishery Management Plan for the Summer Flounder Fishery (FMP). The rule establishes a minimum size limit for summer flounder; requires that permitted vessels comply with the stricter of FMP or State minimum size limits; prohibits retention of summer flounder by foreign fishermen; requires annually renewable vessel permits; and establishes a mechanism to increase minimum size limits if trends in fishing mortality rates so indicate. The regulations are intended to reduce fishing mortality, increase long-term yield from the fishery, improve uniformity of management, and provide better management information.

EFFECTIVE DATE: November 3, 1988.

ADDRESSES: Copies of the biological opinion prepared for the Endangered Species Act section 7 consultation are available from Richard Roe, Regional Director, NMFS, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799.

Copies of the FMP, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 508-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed FMP was published in the *Federal Register* on June 21, 1988 (53 FR 23292). The proposed rule was published in the *Federal Register* on July 21, 1988 (53 FR 27536). Comments were received through September 6, 1988. The FMP initiates management of the fishery for summer flounder (*Paralichthys*

dentatus) pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act). The management unit is summer flounder in the exclusive economic zone (EEZ) from North Carolina northward. Objectives of the FMP are to: (1) Reduce fishing mortality on immature summer flounder; (2) increase yield from the fishery; (3) promote compatible management regulations between State waters and the EEZ; and (4) minimize regulations to achieve the management objectives recognized above. Optimum yield (OY) is all summer flounder harvested pursuant to the FMP. The conservation and management measures proposed in the FMP to achieve OY are designed to reduce current growth overfishing occurring in the fishery.

Management Measures Implemented by the Final Rule

This rule implements the following management measures:

1. It is illegal to land or possess at sea summer flounder, or parts thereof, less than 13 inches total length (TL).
2. Vessels issued permits under the FMP are required to fish and land as required by the FMP unless the vessels land in States having larger minimum size limits for summer flounder, in which case the State limits would prevail.
3. Foreign fishermen are not allowed to retain summer flounder.
4. Vessels fishing commercially for summer flounder, either directly or as a bycatch in other fisheries, and vessels for hire in the recreational fishery (party and charter boats) are required to obtain annually renewable permits.
5. States having minimum size limits larger than those in the FMP and minimum mesh size regulations are encouraged to maintain them.
6. After 3 years of FMP implementation the Council will begin annually to examine fishing mortality estimates of 2-year-old summer flounder to measure effectiveness of the size limit relative to the FMP objectives. If the Council finds that fishing mortality rates for that age class have increased, and if the Regional Director, Northeast Region, NMFS, concurs with the Council, the minimum fish size limit will be adjusted to 14 inches TL. In determining need for such an action, the Council will examine fishing mortality estimates from (1) the Northeast Fisheries Center's (NEFC) spring survey and (2) a virtual population analysis (VPA) based on commercial and recreational catch-per-unit-effort (CPUE) indices. If the trend of either the NEFC or VPA mortality estimates increases over a 3-year period, the minimum size increase will be required. The fishing mortality rate of 2-

year-old fish estimated from NEFC's spring surveys will be measured relative to the baseline level established from NEFC survey data from 1976-1988. The trend in mortality rates determined by VPA will be compared to a baseline calculated from 1976-1988 catch-at-age data. Best estimates of discards will be incorporated into the catch-at-age and commercial CPUE data. CPUE indices used in VPA will be evaluated using standardized fishing power analyses of commercial and recreational fisheries data.

Impact on Endangered Species

A consultation under section 7 of the Endangered Species Act was conducted by NMFS and a biological opinion regarding potential impacts of the FMP on endangered and threatened sea turtles was prepared. The opinion concluded that the rule and associated activities are not likely to jeopardize the continued existence of endangered or threatened sea turtles. The Incidental Take Statement contained in the biological opinion sets forth conditions which must be followed before an incidental take is authorized. Among those conditions is a requirement for a monitoring system which will:

- a. Document all captures of all species of sea turtles;
- b. Provide participating vessels with handling, resuscitation and documentation procedures; and
- c. Provide reports of all takes to NMFS at least every 3 months.

Section 625.5 has been reserved for recordkeeping and reporting requirements. A proposed rule will soon be issued at § 625.5 to implement this condition. Copies of the biological opinion are available from the NMFS Northeast Regional Office (see ADDRESSES).

Comments and Responses

Written comments were submitted by the U.S. Coast Guard, Department of the Interior and the Sport Fishing Institute. All comments received supported approval of the FMP.

Comment. The U.S. Coast Guard commented that detailed information on vessel equipment and electronics requested on the permit application would require verification during boardings conducted by that agency and reapplication should the information change.

Responses: The information to be included on the Federal Fisheries Permit has not been changed by the FMP. Additional information requested on the permit application will not appear on the permit and will not require Coast Guard verification. Reapplication for

changing permit information is consistent with requirements already implemented for other FMPs.

Comment. The Sport Fishing Institute requested that the FMP be approved, but that the Council prepare, within 2 years, an amendment that would include a 14-inch minimum size, a commercial quota and a recreational bag limit. Concern was expressed that the benefits of the measures contained in the FMP would not be significant.

Response: The FMP contains a measure that would impose an increase in minimum size after 3 years (from FMP implementation) if biological indicators demonstrate that fishing mortality has increased. Additional management measures can be addressed by the Council at any time, if so indicated.

Changes from the Proposed Rule

Paragraph 611.50(b)(4)(ii) was added and amended in order to add summer flounder to the list of prohibited species and to implement the FMP prohibition of retention of summer flounder by foreign fishermen. This was inadvertently left out of the proposed rule but was mentioned in the preamble to the proposed rule.

Section 625.1 was changed by deleting paragraph (b) because it was a redundancy of paragraph (a) of the section.

Section 625.4(a) was changed to make it consistent with rules already implemented through other FMPs.

Section 625.4(g) was changed to reflect correct citation.

Section 625.4(a) was changed to make it consistent with rules already implemented through other FMPs.

Section 625.6(a) was added to provide specificity, to expedite vessel identification and to make the measure consistent with rules already implemented through other FMPs.

Section 625.6(b), which was § 625.6(a), was renumbered.

Section 625.6(c), which was § 625.6(b), was renumbered and changed to make it consistent with rules already implemented through other FMPs.

Section 625.7 was modified to remove prohibitions duplicative of those specified in § 620.7 of this chapter and to make it consistent with rules already implemented through other FMPs.

Section 625.7(a)(1), which was § 625.7(a), was modified to clarify that persons who possess unlawfully landed fish would be liable during the entire landing process.

Section 625.7(b)(2) was added to clarify that dealers who possess unlawfully landed fish would be liable under that section.

In § 625.23, the section heading was changed to make it consistent with rules already implemented through other FMPs, and to reflect the intent of the FMP that enforcement of the minimum size for both the whole fish and parts would occur during the entire landing process.

Section 625.23(a) was changed to clarify the language.

Section 625.23(b) was changed to shorten language and to specify actions required by the Secretary of Commerce.

Section 625.23(c) was deleted as duplicative of § 625.4(a)(1).

Classification

The Regional Director determined that the FMP is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for this FMP and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA from the Council at the address listed above.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The permit requirements under § 625.4 have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0207.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 611 and 625

Fishing, Fisheries, Foreign fishing, Vessel permits and fees.

Dated: September 30, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA amends 50 CFR Chapter VI as follows:

PART 611—FOREIGN FISHING

1. The Authority citation for Part 611 continues to read as follows:

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

§ 611.50 [Amended]

2. Section 611.50(b)(4)(ii) is amended by adding "summer flounder" after "striped bass".

3. New Part 625 is added to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

Subpart A—General Provisions

Sec.

- 625.1 Purpose and scope.
- 625.2 Definitions.
- 625.3 Relation to other laws.
- 625.4 Vessel permits and fees.
- 625.5 Recordkeeping and reporting.
- [Reserved]
- 625.6 Vessel identification.
- 625.7 Prohibitions.
- 625.8 Facilitation of enforcement.
- 625.9 Penalties.

Subpart B—Management Measures

- 625.20 Fishing year. [Reserved]
- 625.21 Allowable levels of harvest.
- [Reserved]
- 625.22 Closure of fishery. [Reserved]
- 625.23 Minimum fish size.
- 625.24 Gear restrictions. [Reserved]
- 625.25 Time restrictions. [Reserved]

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

Subpart A—General Provisions

§ 625.1 Purpose and scope.

The regulations in this part implement the Fishery Management Plan for the Summer Flounder Fishery (FMP), which was prepared and adopted by the Mid-Atlantic Fishery Management Council in cooperation with the New England and South Atlantic Fishery Management Councils and approved by the Under Secretary for Oceans and Atmosphere, NOAA.

§ 625.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Charter or party boat means any vessel which carries passengers for hire to engage in fishing.

Fishery Management Plan (FMP) means the Fishery Management Plan for

the Summer Flounder Fishery and any amendments thereto.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

NEFC means the Northeast Fisheries Center, NMFS, Water Street, Woods Hole, MA 02543.

Person who receives summer flounder for commercial purposes means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of summer flounder. The term includes, but is not limited to, dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports summer flounder between a fishing vessel and a first purchaser.

Regional Director means the Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930-3799, telephone 508-281-3600, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson Act.

Summer flounder means *Paralichthys dentatus*.

Total length (TL) means the distance from the tip of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Vessel length means that length specified on State registration or U.S. Coast Guard documentation.

§ 625.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Additional regulations governing fishing for summer flounder by foreign vessels in the EEZ are set forth in 50 CFR Part 611, Subparts A and C.

§ 625.4 Vessel permits and fees.

(a) *General.* (1) Any vessel of United States fishing for summer flounder in the EEZ must have a permit required by this part aboard the vessel. A vessel with a permit issued under these regulations is required to fish and land under these regulations unless the vessel lands in a State having larger minimum summer flounder size limits than those provided in these regulations; in that case the landings must meet the State limits. A recreational vessel is exempt from the permitting requirement if it catches no more than 100 pounds of summer flounder per trip.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of

the permit that the vessel's fishing and catch (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish are possessed, taken, or landed), will be subject to all the requirements of this part.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide all of the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner and master of the vessel;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number or the vessel's State registration number for a vessel not required to be documented under Title 46 of the U.S. Code;

(iv) Home port and principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower of the vessel and the year the vessel was built;

(vi) Type of construction, type of propulsion, navigational aids (e.g., Loran C), type of on-board computer, and type of echo sounder of the vessel;

(vii) Permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) Approximate fish hold capacity of the vessel (to the nearest 100 lbs);

(ix) Type and quantity of fishing gear used by the vessel;

(x) Average size of the crew, including the captain, which may be stated in terms of a normal range;

(xi) Directed fishery or fisheries;

(xii) Quantity of summer flounder landed during the calendar year prior to the one for which the permit is being applied;

(xiii) Number of passengers the vessel is licensed to carry (party and charter boats); and

(xiv) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(d) *Fees.* No fee is required for any permit issued under this part.

(e) *Issuance.* The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit will expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit will continue in effect until December 31 of each year unless it is revoked, suspended, or modified under 15 CFR Part 904.

(h) *Alteration.* No person may alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

(k) *Display.* The permit is subject to inspection by an authorized officer.

(l) *Suspension and revocation.* Subpart D of 15 CFR Part 904 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part.

§ 625.5 Recordkeeping and reporting.
[Reserved]

§ 625.6 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and over 25 feet in length must display its name on the port and starboard sides of its bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part and over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches in height for fishing vessels over 65 feet in length, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be that length set forth in U.S. Coast Guard or State records.

(d) *Duties of owner or operator.* The owner or operator of each vessel subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(e) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements when the vessel is fishing for summer flounder.

§ 625.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit under § 625.4 to do any of the following:

(1) Land or possess at sea any summer flounder, or parts thereof, which fail to meet the minimum fish size specified in § 625.23; and

(2) Fail to affix and maintain markings as required by § 625.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except for recreational fishing vessels catching no more than 100 pounds per trip) for the taking, catching, harvesting, or landing of any summer flounder taken from the EEZ unless the vessel has a valid permit issued under this part and the permit is aboard the vessel;

(2) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, or export any summer flounder taken, retained, possessed, or landed in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(3) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, sale, possession, or transfer of any summer flounder;

(4) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcement of this part; or

(5) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel.

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

§ 625.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 625.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures**§ 625.20 Fishing year. [Reserved]****§ 625.21 Allowable levels of harvest. [Reserved]****§ 625.22 Closure of fishery. [Reserved]****§ 625.23 Minimum fish size.**

(a) The minimum size for summer flounder, including parts thereof, is 13 inches TL.

(b) *Increase in the minimum fish size.*

(1) The Secretary must, based upon a recommendation of the Council, increase the minimum size for summer flounder to 14 inches TL beginning 3 years after the date of implementation of these regulations, or upon annual reassessment thereafter, if the Regional Director determines that the trend in fishing mortality of age-2 summer flounder has increased from the baseline established by the NEFC using survey and catch-at-age data from 1976-1988.

(2) In making this determination, the Regional Director must consider:

(i) Fishing mortality estimated from the NEFC's spring survey;

(ii) Fishing mortality estimated from a virtual population analysis based on commercial and recreational catch per unit of effort; and

(iii) Any other relevant information.

(3) Any increase in the minimum size must be published as a notice in the Federal Register with the basis for such increase.

§ 625.24 Gear restrictions. [Reserved]**§ 625.25 Time restrictions. [Reserved]**

[FR Doc. 88-23221 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area; Closure

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the directed fishery for pollock delivered to foreign processors in the Bering Sea Subarea. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of pollock specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

DATES: Effective 2400 G.m.t., October 6, 1988. Comments will be accepted through October 19, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK. 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Resource Management Specialist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and Part 675. Amendment 11 to the FMP established a split-season apportionment of pollock for JVP, which is implemented at section 675(20)(b)(3).

For other actions in 1988 concerning JVP pollock in the Bering Sea Subarea, see 53 FR 894 (January 14, 1988), 53 FR 4178 (February 12, 1988), 53 FR 12772 (May 10, 1988), 53 FR 18841 (May 25,

1988), 53 FR 19303 (May 27, 1988), and 53 FR 35081 (September 9, 1988).

Notice of Closure to Directed Fishing

Under § 675.20(b)(3)(ii), the Regional Director has determined that 2,600 mt pollock will be needed for bycatch in other JVP fisheries for Pacific cod, yellowfin sole, and other flat fish following closure of directed fishing for pollock. The JVP amount of pollock for the Bering Sea subarea (775,830 mt) less 2,600 mt reserved for bycatch will be taken by 2400 G.m.t., October 6. To preserve this bycatch amount, U.S. fishermen delivering catches to foreign processing vessels must cease directed fishing for pollock at 2400 G.m.t., October 6, 1988. Directed fishing is defined in § 675.2.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of pollock from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 4, 1988.

Joe P. Clem,

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

[FR Doc. 88-23220 Filed 10-4-88; 3:37 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 195

Friday, October 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 15

Debt Collection Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the procedures that the NRC uses to collect the debts which are owed to it. The proposed amendment is necessary to conform NRC regulations to the amended procedures contained in the Federal Claims Collections Standards issued by the General Accounting Office (GAO) and the Department of Justice (DOJ). The proposed action is intended to allow the NRC to further improve its collection of debts due the United States.

DATE: Submit comments by November 21, 1988. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES:

Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, One White Flint North, Rockville, Maryland, between 7:45 am and 4:15 pm.

Examine comments received at: The NRC Public Document Room, 2120 L Street NW., low level, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Graham D. Johnson, Director, Division of Accounting and Finance, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7535.

SUPPLEMENTARY INFORMATION: On February 22, 1982 (47 FR 7615), the Nuclear Regulatory Commission (NRC) published a final rule concerning debt collection procedures. Since then, the Debt Collection Act of 1982 (Pub. L. 97-365) was enacted on October 25, 1982 which revised the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*). On March 9, 1984 (49 FR 8889), the General Accounting Office and the Department of Justice issued a final rule amending the Federal Claims Collection Standards as set out in 4 CFR Parts 101-105. The NRC regulations are based on the requirements contained in the Federal Claims Collection Standards.

The proposed revision to 10 CFR Part 15 provides procedures for the Nuclear Regulatory Commission to collect, compromise, or terminate collection action on claims owed to the United States Government arising from activities under NRC jurisdiction. The proposed revision implements the Federal Claims Collection Act as amended by the Debt Collection Act and supplements the amendments to the Federal Claims Collection Standards.

The NRC intends to revise 10 CFR 2.205 to specify those provisions of 10 CFR Part 15 which apply to civil penalties assessed by the NRC under 10 CFR 2.205.

Section by Section Analysis

Section 15.1 Application.

This section is being revised to make it clear that Part 15 prescribes NRC procedures for collecting, compromising, terminating and referring claims to the General Accounting Office and the Department of Justice and conform to Pub. L. 99-224.

Paragraph (b)(1) is being modified to conform to the provisions of Pub. L. 99-224, dated December 28, 1985, which amended 5 U.S.C. 5584, 10 U.S.C. 2774 and 32 U.S.C. 716 by authorizing waivers of erroneous payments of travel, transportation and relocation expenses and allowances.

A new paragraph (b)(2) is being added to indicate that civil monetary penalties imposed under 10 CFR 2.205 are subject to special statutory and administrative procedures.

Section 15.2 Definitions

This new section is being added to provide definitions for the terms "administrative offset", "claim and

debt", "delinquent", "license", and "payment in full" as they are used in this part and 4 CFR Parts 101-105.

Section 15.3 Communications.

This section is being revised by correcting the Commission's address for communications concerning the regulations in 10 CFR Part 15.

Section 15.5 Claims that are covered.

This section is being revised to note that the provisions of 10 CFR Part 15 which apply to civil penalties shall be specified in 10 CFR 2.205, to note that the provisions of 10 CFR Part 15 do not apply to claims between Federal agencies, and to explicitly provide that fees imposed under 10 CFR Parts 170 and 171 are covered.

Section 15.7 Monetary limitation on NRC's authority.

The statutory citation in this section is being corrected to read 31 U.S.C. 3711(b). Paragraph (b) is being modified to include "penalties, and administrative costs" with the exclusion of interest from the \$20,000 limitation on the NRC's compromise authority.

Section 15.9 Omissions not a defense.

This section is being modified to include the citation for the Federal Claims Collection Standards.

Section 15.13 Subdivision of claims.

A cross reference to the statutory and regulatory authority for this section is being added.

Section 15.21 Written demands for payment.

Paragraph (a)(1) is being modified to include notice to the debtors of their right to seek review within the agency. Paragraph (a)(4) is being modified to indicate the date of mailing or hand delivery as the date on which payment is to be made under normal circumstances, consistent with 4 CFR Part 102. Paragraph (a)(5) is being modified to include penalties and administrative costs of collection in the demand for payment.

Minor editorial changes are made to paragraph (b), including the addition of possible reporting of delinquent debt to consumer reporting agencies.

Section 15.25 Personal interviews.

This section is being modified to make such interviews discretionary on the part of the NRC under paragraph (a) while maintaining a requirement to grant an interview to the debtor, if requested, under paragraph (b).

Section 15.26 Use of consumer reporting agencies.

A new section is being added to provide for the reporting of delinquent debts to consumer reporting agencies, notifying debtors of these actions, reporting debt status changes to debtors, and limiting the information which the NRC may provide to consumer reporting agencies.

Section 15.29 Suspension or revocation of license.

This section is being modified to correspond more closely to the terminology used in 4 CFR Parts 101-105.

Section 15.31 Disputed debts.

This section is being modified to correspond more closely to the terminology used in 4 CFR Parts 101-105.

Section 15.32 Contracting for collection services.

This new section is added to provide for NRC action to collect a debt by means of a commercial collection agency, as authorized by 4 CFR 102.6. With the inclusion of this new section, § 15.63 is being removed from Subpart E of this part.

Section 15.33 Collection by administrative offset.

This section is being modified to disclose the 10 year limitation on the NRC's authority to initiate an administrative offset. If the payment of fees to the NRC is deferred, the ten years will run from the end of the deferral period or any other period the NRC subsequently establishes.

Paragraphs (b), (c) and (d) of this section are being changed to make it consistent with the provisions in 4 CFR Parts 102.2, 102.2, 102.3, and 102.4 and 5 U.S.C. 5514. Provisions are added to establish the debtor's procedural rights, to provide for seeking offset from other Government agencies when they have funds due the debtor, to provide for NRC acceptance of a repayment agreement in lieu of an offset, and to establish other limitations on the use of administrative offset in the collection of debts owed the NRC.

Section 15.35 Payments.

Language is being added to this section to clarify that charges for interest, penalties, and administrative costs will be assessed on delinquent payments paid in full in one lump sum. In addition, language is being added to explain how an installment agreement will be instituted and applied to a debt. The significant additions are a provision for accelerated payment in the event the debtor defaults on an installment agreement and an indication that the NRC will comply with the debtor's instructions in the application of payments when more than one debt is involved. However, if the debtor does designate the application of payments, the NRC will apply the payments in the best interest of the United States.

Section 15.37 Interest, penalties, and administrative costs.

This section is changed substantially by revising its title and adding the following new paragraphs:

Paragraph (e) provides that the interest rate on a debt will remain fixed except under specified circumstances.

Paragraph (f) provides that the NRC will assess against the debtor the costs of administratively handling a delinquent debt.

Paragraph (g) codifies the current NRC practice of assessing a penalty charge in the amount of 6 percent per annum on a debt that is delinquent for more than 90 days. This charge accrues from the date that the debt became delinquent. Thus, both interest and penalties are calculated from the same initial date.

Paragraph (h) provides that payments will be applied first to outstanding penalty and administrative charges, then to interest, and finally to the principal.

Paragraph (i) codifies current NRC practice of waiving interest for debts paid within 30 days of the due date.

Paragraph (j) codifies current NRC practice of waiving interest during the period a disputed debt is under investigation.

Paragraph (k) codifies other circumstances under which interest, penalties, and administrative costs may be waived.

Section 15.38 Use of credit reports.

A new section is being added to allow NRC to institute a credit investigation of a debtor in order to make appropriate determinations regarding the collection of a claim.

Section 15.41 When a claim may be compromised.

The opening sentence of this section is being changed for clarification purposes only.

Section 15.43 Reasons for compromising a claim.

This section is being modified to bring it into conformity with 4 CFR Part 103. Paragraph (c) is changed to indicate the standard of enforced collection costs in accordance with 4 CFR 103.4 rather than as currently stated. Paragraph (d) is being divided to set out separately in a new paragraph (e) the requirement for an enforceable agreement of installment payments under a compromise of a claim.

Section 15.45 Restrictions on the compromise of a claim.

The opening sentence of this section is being changed for clarification purposes only.

Section 15.51 When collection action may be suspended or terminated.

This section is being modified to indicate the exclusion of interest, penalties, and administrative costs from the monetary limitation on when the NRC may suspend or terminate collection action.

Section 15.61 Prompt referral.

Paragraph (a) is being modified to delete the reference to a private collection agency which is now to be addressed in the new § 15.32 discussed above. A one-year referral requirement is codified for NRC action after final determination of the fact and the amount owed to the NRC.

A new paragraph (b) is being added to provide for NRC referral to GAO of questions concerning acceptance of a proposed compromise, suspension, or termination of collection actions in order to obtain GAO's advice on the matter in question. The current paragraph (b) will be redesignated as paragraph (c).

A new paragraph (d) is being added to reflect the fact that once a referral has been made to GAO or the DOJ, the NRC will refrain from any contact with the debtor and will immediately advise GAO or the DOJ of any payments made by the debtor.

Section 15.63 Referral of a claim to private agencies for collection.

This section is being deleted both because of the new § 15.32 which addresses these actions, and because these collection actions are not a referral in the truest sense, but rather

reflect a different form of collection action by the NRC using other means.

Section 15.67 Referral to the Department of Justice.

A new paragraph (a) is being added to indicate the threshold for determining to whom the NRC will refer a claim for enforced collection, i.e., the DOJ or the appropriate U.S. Attorney. The current paragraphs (a) and (b) are being redesignated as paragraphs (b) and (c), respectively.

A new paragraph (d) is being added to indicate that the NRC must make its referrals in accordance with the guidance in 4 CFR 105.2 and that pertinent evidence will be preserved.

Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental statement is not required. Amending the procedures that the Commission uses to collect the debts which are owed to it will have no radiological environmental impact offsite and no impact on occupational radiation exposure onsite. The Amendment does not affect nonradiological plant effluents and has no other environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW., lower level, Washington, DC.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

This proposed rule will bring NRC debt collection procedures into conformance with current statutory and regulatory guidance and requirements and, as such, does not have significant impacts on state and local governments and geographical regions, health, safety, and the environment; nor does it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Any impact on a small entity which might occur will result solely from the acts or omissions of the small entity concerned because of its failure to pay a valid debt to the NRC. As a result, a regulatory flexibility analysis has not been prepared.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 15

Administrative practice and procedure, Debt collection.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Federal Claims Collection Act of 1966, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 15.

PART 15—DEBT COLLECTION PROCEDURES

1. The authority section for Part 15 is revised to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 3, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3711, 3717, 3718); sec. 1, Pub. L. 97-258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89-508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97-365, 96 Stat. 1749 (31 U.S.C. 3701-3719); Federal Claims Collection Standards, 4 CFR Parts 101-105.

2. Section 15.1 is amended by revising paragraphs (a) and (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and adding a new paragraph (b)(2) to read as follows:

§ 15.1 Application.

(a) This part applies to claims for the payment of debts owed to the United States Government in the form of money or property and; unless a different procedure is specified in a statute, regulation, or contract; prescribes procedures by which the NRC—

(1) Collects, compromises, suspends, and terminates collection actions for claims;

(2) Determines and collects interest and other charges on these claims; and
(3) Refers unpaid claims to the General Accounting Office and the Department of Justice for litigation.

(b) * * *

(1) A claim against an employee for erroneous payment of pay and allowances subject to waiver under 5 U.S.C. 5584.

(2) A claim against an applicant for or a holder or former holder of an NRC license involving the payment of civil penalties imposed by the NRC under 10 CFR 2.205.

3. Section 15.2 is added to read as follows:

§ 15.2 Definitions.

"Administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the United States Government.

"Claim" and "debt" are used synonymously and interchangeably for the purposes of this part. These terms refer to money or property which has been determined by an appropriate NRC official to be owed to the United States by any person, organization, or entity, except another Federal agency.

A debt is considered "delinquent" if it has not been paid by the date on which the initial written demand for payment is first mailed or hand delivered to the debtor or as otherwise established by Federal statute, regulations, or applicable contractual agreement with the NRC unless other satisfactory payment arrangements have been made by that date. If the debtor fails to satisfy obligations under a payment agreement with the NRC after other payment arrangements have been made, the debt becomes a delinquent debt.

"License" means any license or permit issued by the Commission.

"Payment in full" means payment to the total debt due the United States, including any interest, penalty, and administrative costs of collection assessed against the debtor.

4. Section 15.3 is revised to read as follows:

§ 15.3 Communications.

Unless otherwise specified, all communications concerning the regulations in this part should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, ATTN: Docketing and Service Branch. Communications may be delivered in person at the Commission's offices at 11555 Rockville Pike, One

White Flint North, Rockville, Maryland 20852.

5. Section 15.5 is amended by revising paragraphs (a)(1) and (b)(1) and by adding paragraph (b)(5) to read as follows:

§ 15.5 Claims that are covered.

(a) * * *

(1) Results from activities of the NRC, including fees imposed under Part 170 and Part 171; or

* * *

(b) * * *

(1) A claim based on a civil monetary penalty for violation of a licensing requirement unless § 2.205 of this chapter provides otherwise.

* * *

(5) Claims between Federal agencies.

6. In § 15.7, the introductory paragraph and (b) are revised to read as follows:

§ 15.7 Monetary limitation on NRC's authority.

The NRC's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures is limited by 31 U.S.C. 3711(a) to claims that—

* * *

(b) Do not exceed \$20,000, exclusive of interest, penalties, and administrative costs (the monetary limitation).

7. Section 15.9 is amended by revising paragraph (a) to read as follows:

§ 15.9 Omissions not a defense.

(a) The failure of the NRC to include in this part any provision of the Federal Claims Collection Standards, 4 CFR Parts 101–105, does not prevent the NRC from applying these provisions.

* * *

8. Section 15.13 is revised to read as follows:

§ 15.13 Subdivision of claims.

The NRC shall consider a debtor's liability arising from a particular transaction or contract as a single claim in determining whether the claim is less than the monetary limitation for the purpose of compromising or suspending or terminating collection action. A claim may not be subdivided to avoid the monetary limitation established by 31 U.S.C. 3711(a)(2) and § 15.7.

9. The heading of Subpart B is revised to read as follows:

Subpart B—Administrative Collection of Claims

10. In § 15.21, paragraph (b)(3) (iii), (iv), and (v) are redesignated as paragraphs (b)(3) (iv), (v), and (vi), respectively; paragraphs (a)(1), (a)(4), (a)(5), and (a)(6), the introductory text of

paragraph (b), and paragraph (b)(2) are revised; and a new paragraph (b)(3)(iii) is added to read as follows:

§ 15.21 Written demands for payment.

(a) * * *

(1) The basis of the indebtedness and the right of the debtor to seek review within the NRC;

* * *

(4) The date on which payment is to be made (This date is normally the date the initial written demand letter statement was mailed or hand delivered, unless otherwise specified by contractual agreement, established by Federal statute or regulation, or agreed to under a payment agreement);

(5) The applicable standards for assessing interest, penalties, and administrative costs under 4 CFR 102.13.

(6) The applicable policy for reporting the delinquent debt to consumer reporting agencies.

(b) Unless a debtor is a current NRC employee, the NRC shall normally send three progressively stronger written demands at not more than 30-day intervals, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay or that sending a further demand is futile. Depending upon the circumstances of the particular case, the second and third demands may—

* * *

(2) State the amount of the interest and penalties that will be added on a daily basis as well as the administrative costs that will be added to the debt until the debt is paid; and

(3) * * *

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidance and standards contained in 4 CFR 102.5 and the NRC procedures set forth in § 15.26;

* * *

11. In § 15.25, the introductory text of paragraph (a) is revised to read as follows:

§ 15.25 Personal interviews.

(a) The NRC may seek an interview with the debtor at the office of the NRC when—

* * *

12. A new § 15.26 is added to read as follows:

§ 15.26 Use of consumer reporting agencies.

(a) In addition to assessing interest, penalties and administrative costs under § 15.37, the NRC may report a debt that had been delinquent for 90 days to a

consumer reporting agency if all the conditions of this paragraph are met.

(1) The debtor has not—

(i) Paid or agreed to pay the debt under a written payment plan that has been signed by the debtor and agreed to by the NRC; or

(ii) Filed for review of the debt under § 15.26(a)(2)(iv).

(2) The NRC has included a notification in the third written demand (see § 15.21(b)) to the individual debtor stating—

(i) That the payment of the debt is delinquent;

(ii) That, within not less than 60 days after the date of the notification, the NRC intends to disclose to a consumer reporting agency that the individual debtor is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has a right to complete explanation of the debt (if that has not already been given), to dispute information in NRC records about the debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

(3) The NRC has sent at least one written demand by either registered or certified mail with the notification described in paragraph (a)(2) of this section.

(4) The NRC has reconsidered its initial decision on the debt when the debtor has requested a review under § 15.26(a)(2)(iv).

(5) The NRC has taken reasonable action to locate a debtor for whom the NRC does not have a current address to send the notification provided for in paragraph (a)(2) of this section.

(b) If there is a substantial change in the condition or amount of the debt, the NRC shall—

(1) Promptly disclose that fact(s) to each consumer reporting agency to which the original disclosure was made;

(2) Promptly verify or correct information about a debt on request or a consumer reporting agency for verification of information disclosed by the NRC; and,

(3) Obtain assurances from the consumer reporting agency that the agency is complying with all applicable Federal, state and local laws relating to its use of consumer credit information.

(c) The information the NRC discloses to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual debtor, including name, address and tax payer identification number;

(2) The amount, status, and history of the debt; and

(3) The NRC activity under which the debt arose.

13. Section 15.29 is revised to read as follows:

§ 15.29 Suspension or revocation of license.

The NRC may suspend or revoke any license or approval which the NRC has granted to the debtor for any inexcusable, prolonged or repeated failure of the debtor to pay a delinquent debt. Before suspending or revoking any license or approval for failure to pay a debt, the NRC shall issue to the debtor an order to show cause (by either registered or certified mail) why the license or other privilege should not be suspended or revoked. The NRC shall allow the debtor no more than 30 days to pay the debt in full, including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The NRC may suspend or revoke the license or approval at the end of this period. If a license is revoked under authority of this part, a new application, with appropriate fees, must be made to the NRC. The NRC may not consider an application unless all previous delinquent debts of the debtor to the NRC have been paid in full.

14. In § 15.31, paragraphs (a) and (b) are revised to read as follows:

§ 15.31 Disputed debts.

(a) A debtor who disputes a debt shall explain why the debt is incorrect in fact or in law within 30 days from the date that the initial demand letter was mailed or hand-delivered. The debtor may support the explanation by affidavits, cancelled checks, or other relevant evidence.

(b) If the debtor's arguments appear to have merit, the NRC may extend the interest waiver period as described in § 15.37 (j) pending a final determination of the existence or amount of the debt.

15. Section 15.32 is added to read as follows:

§ 15.32 Contracting for collection services.

The NRC may contract for collection services in order to recover delinquent debts. However, the NRC retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the NRC shall contract for collection services in accordance with guidance and standards contained in 4 CFR 102.6.

16. In § 15.33, paragraph (a), (b), and (c) are revised; paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 15.33 Collection by administrative offset.

(a) The NRC may administratively undertake collection by offset on each claim which is liquidated or certain in amount in accordance with the guidance and standards contained in 4 CFR Parts 102.2, 102.3, and 102.4, and 5 U.S.C. 5514, as applicable. The NRC may not initiate administrative offset to collect a debt more than 10 years after the Government's right to the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the NRC of collection of "approval fees" has been deferred under 10 CFR Part 170. If the collection of "approval" fees has been deferred, the ten-year period begins to run at the end of the deferral period.

(b) Collection by administrative offset of amounts payable from the Civil Service Retirement and Disability Fund is made pursuant to 4 CFR 102.4 and the provisions of paragraph (d) of this section.

(c) Salary offset is governed by 5 U.S.C. 5514.

(d) The following procedures apply when the NRC seeks to collect a debt by offset against any payment to be made to a debtor or against the assets of a licensee.

(1) Before the offset is made, the NRC shall provide the debtor with a written notice of the nature and amount of the debt and—

(i) Notice of the NRC's intention to collect the debt by offset;

(ii) An opportunity to inspect and copy NRC records pertaining to the debt;

(iii) An opportunity to request reconsideration of the debt by the NRC or, if provided for by statute, waiver of the debt;

(iv) An opportunity to enter into a written agreement with the NRC to repay or pay the debt, as the case may be;

(v) An explanation of the debtor's rights under this subpart; and

(vi) An opportunity for a hearing when required under the provisions of 4 CFR 102.3(c).

(2) If the NRC learns that other agencies of the Federal government are holding funds payable to the debtor, the NRC shall provide the other agencies with written certification that the debt is owned to the NRC and that the NRC has

complied with the provisions of 4 CFR 102.3. The NRC shall request that funds due the debtor which are necessary to offset the debt to the NRC be transferred to the NRC.

(3) The NRC may accept a repayment or payment agreement, as appropriate, in lieu of offset, but will do so only after balancing the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the NRC may accept a repayment or payment agreement in lieu of offset only if the debtor is able to establish under sworn affidavit that offset would result in undue financial hardship or would be against equity and good conscience.

(4) Administrative offset is not authorized with respect to—

(i) Debts owed by any State or local government; or

(ii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

(5) The NRC reserves the right to take any other action in respect to offset as is permitted under 4 CFR 102.3.

17. Section 15.35 is amended by revising paragraphs (a) and (b) to read as follows:

§ 15.35 Payments.

(a) *Payment in full.* The NRC shall make every effort to collect a claim in full before it becomes delinquent. If a claim is paid in one lump sum after it becomes delinquent, the NRC shall impose charges for interest, penalties, and administrative costs as specified in § 15.37.

(b) *Payment in installments.* If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement that the debtor's application for a loan to enable the debtor to pay the claim is full was rejected. Except for a claim described at 5 U.S.C. 5514, all installment payment arrangements must be in writing and require the payment of interest.

(1) Installment note forms, including confess-judgment notes, may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of

and installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the assets until the debt is discharged.

(2) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied among those debts, the NRC shall follow that designation. If the debtor does not designate the application of the payment, the NRC shall apply the payment to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case.

* * * * *

18. Section 15.37 is revised to read as follows:

§ 15.37 Interest, penalties, and administrative costs.

(a) The NRC shall assess interest, penalties, and administrative costs of debts owed to the United States Government in accordance with the guidance provided under the Federal Claims Collection Standards, 4 CFR 102.13 unless otherwise directed by statute, regulation, or contract.

(b) Before assessing any charges on delinquent debts, the NRC shall mail or hand-deliver a written notice to the debtor explaining its requirements concerning these charges under 4 CFR 102.2 and 102.13.

(c) Interest begins to accrue from the date on which the initial written demand, advising the debtor of the interest requirements, is first mailed or hand delivered to the debtor unless a different date is specified in a statute, regulation, or contract.

(d) The NRC shall assess interest based upon the rate of the current value of funds to the United States Treasury (the Treasury tax and loan account rate) prescribed for the current quarter and published in the Federal Register and the Treasury Financial Manual Bulletins, unless a different rate is prescribed by statute, regulation, or contract.

(e) Interest is computed only on the principal of the debt and the interest rate remains fixed for the duration of the indebtedness, unless a debtor defaults on a repayment agreement and seeks to enter into a new agreement.

(f) The NRC shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(g) The NRC shall assess a penalty charge of 6 percent a year on any

portion of a debt that is delinquent for more than 90 days. The charge accrues retroactively to the date that the debt became delinquent.

(h) Amounts received by the NRC as partial or installment payments are applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(i) The NRC shall waive collection of interest on the debt or any portion of the debt which is paid in full within 30 days after the date on which interest began to accrue.

(j) The NRC may waive interest during the period a debt disputed under § 15.31 is under investigation or review by the NRC. However, this additional waiver is not automatic and must be requested before the expiration of the initial 30-day waiver period. The NRC may grant the additional waiver only when it finds merit in the explanation the debtor has submitted under § 15.31.

(k) The NRC may waive the collection of interest, penalties, and administrative costs if it finds that one or more of the following conditions exist:

(1) The debtor is unable to pay any significant sum toward the debt within a reasonable period of time;

(2) Collection of interest, penalties, and administrative costs will jeopardize collection of the principal of the debt;

(3) The NRC is unable to enforce collection in full within a reasonable time by enforced collection proceedings; or

(4) Collection would be against equity and good conscience or not in the best interests of the United States, including the situation in which an administrative offset or installment payment agreement is in effect.

19. Section 15.38 is added to read as follows:

§ 15.38 Use of credit reports.

The NRC may institute a credit investigation of the debtor at any time following receipt of knowledge of the claim in order to aid NRC in making appropriate determination as to—

(a) The collection and compromise of a claim;

(b) The collection of interest, penalties, and administrative costs;

(c) The use of administrative offset;

(d) The use of other collection methods; and

(e) The likelihood of collecting the claim.

20. Section 15.41 is revised to read as follows:

§ 15.41 When a claim may be compromised.

The NRC may compromise a claim not in excess of the monetary limitation if it has not been referred to the GAO or to the DOJ for litigation. Only the Comptroller General of the United States or designee may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payee, prior to its referral by GAO for litigation.

21. In § 15.43, paragraph (b) is amended by inserting a comma after the word "claimed" by revising paragraph (c) and (d) and by adding paragraph (e) to read as follows:

§ 15.43 Reasons for compromising a claim.

* * * * *

(c) The cost of collecting the claim does not justify the enforced collection of the full amount. The NRC shall apply this reason for compromise in accordance with the guidance in 4 CFR 103.4.

(d) The NRC shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts which are acceptable in compromise in accordance with the Federal Claims Collection Standards, 4 CFR Part 103.

(e) Compromises payable in installments are discouraged, but, if necessary, must be in the form of a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon. The agreement also must provide that in the event of default—

(1) The entire balance of the debt becomes immediately due and payable; and

(2) The Government has the right to enforce any security interest.

§ 15.45 [Amended]

22. In the first sentence of § 15.45, the word "or" is corrected to read "nor."

23. Section 15.51 is revised to read as follows:

§ 15.51 When collection action may be suspended or terminated.

The NRC may suspend or terminate collection action on a claim not in excess of the monetary limitation, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments, if any, if it has not been referred to the GAO or to the DOJ for litigation.

24. Section 15.61 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a),

and adding new paragraphs (b) and (d) to read as follows:

§ 15.61 Prompt referral.

(a) A claim which requires enforced collection action is referred to the GAO or to the DOJ for litigation. A referral is made as early as possible consistent with aggressive collection action and in any event well within the time required to bring a timely suit against the debtor. Ordinarily referrals are made within one year of the NRC's final determination of the fact and the amount of the debt.

(b) When the merits of the NRC's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination of collection actions is in doubt, the NRC shall refer the matter to the GAO for resolution and instructions prior to proceeding with collection action and/or referral to the DOJ for litigation.

(d) Once a claim has been referred to GAO or to the DOJ under this subpart, the NRC shall refrain from having any contact with the debtor and shall direct the debtor to GAO or DOJ, as appropriate, when questions concerning the claim are raised by the debtor. The NRC shall immediately advise GAO or DOJ, as appropriate, of any payments by the debtor.

§ 15.63 [Removed]

25. Section 15.63 is removed.

26. Section 15.67 is amended by redesignating paragraphs (a) and (b) as paragraph (b) and (c), respectively, and by adding new paragraphs (a) and (d) to read as follows:

§ 15.67 Referral to the Department of Justice.

(a) Claims for which the gross original amount is over \$100,000 must be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is \$100,000 or less must be referred to the United States Attorney in whose district the debtor can be found.

(d) Claims must be referred to the Department of Justice in the manner prescribed by 4 CFR 105.2. Care must be taken to preserve all files, records, and exhibits on claims referred under paragraphs (a) and (b) of this section.

Dated at Rockville, Maryland, this 30th day of September 1988.

For the Nuclear Regulatory Commission:
Victor Stello, Jr.,

Executive Director, for Operations.

[FR Doc. 88-23183 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 80994-8194]

Watch Duty-Exemption Program

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on several proposals to amend 15 CFR Part 303, which governs the allocation of duty-exemption entitlements among watch producers in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and in the territory of the Northern Mariana Islands. The proposed amendments would convert references in the regulations to the Tariff Schedules of the United States in the Harmonized Nomenclature and make certain other changes in the allocation criteria.

DATE: Comments must be received on or before November 7, 1988.

ADDRESS: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660; same address as above.

SUPPLEMENTARY INFORMATION: Public Law 97-446, enacted January 12, 1983, requires the Secretaries of Commerce and the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may enter the United States free of duty during each calendar year, designate a share of this amount to each territory, and issue each producer an annual allocation from the territorial share in accordance with the regulations. The

law also requires the Secretaries to issue production incentive certificates (PICs) to producers based on the amount of wages paid by each producer to permanent residents of the possessions. These PICs entitle the holder to a refund of duties paid on other watch imports into the United States. Applicable statutory provisions are found in the Tariff Schedules of the United States ("TSUS") at Schedule 7, Part 2, Subpart E, Headnotes 3 and 6 (19 U.S.C. section 1202 note). Applicable regulations are in 15 CFR Part 303 ("the regulations").

We propose to modify the regulations in several respects. First, Pub. L. 100-418, enacted August 23, 1988, mandates the implementation of the Harmonized Tariff Schedule of the United States ("HTSUS") from the present Tariff Schedules of the United States ("TSUS") effective January 1, 1989. We would replace references to Headnotes 3 and 6 of the TSUS in §§ 303.1, 303.2, 303.5, and 303.14 of the regulations with references to U.S. Legal Note 5 to Chapter 91 ("91/5") of the HTSUS.

Second, we propose to change the formula in § 303.14(a)(1) (i) and (ii) for allocating territorial shares of the total amount of duty exemptions among the producers in each territory. The current regulations provide that 80 percent of the territorial shares shall be allocated on the basis of creditable wages paid to territorial residents, and 20 percent shall be allocated on the basis of the number of units of watches and watch movements assembled and entered free of duty into the customs territory of the United States. The 80 percent weight on creditable wages was introduced to stimulate a greater degree of watch and watch movement assembly based on the assumption that the more assembly work done, the greater number of employees required and, in turn, the higher the creditable wages. At the time, no regulation required complete watch and watch movement assembly as a condition for duty-free entry, nor were there PICs to stimulate a greater degree of assembly. We are proposing to change the percentages to 50 for each factor, which would place a higher premium on producers' ability to assemble and market their product without reducing their incentive to maintain high degrees of assembly activity.

Third, the proposed rule would modify § 303.14(b)(3) of the regulations by raising the maximum value of components for watches, with or without attached bands, from \$80 to \$150 and of watch movements from \$30 to \$35. (Under the HTSUS, watch bands, bracelets, and straps will be classified

as part of the watch to which they are attached and, therefore, eligible for duty-free treatment under 91/5.) This change would relax the limitation on the value of imported components that may be used on assembling watches and watch movements eligible under the program for duty exemptions. The proposed value levels would allow the producers wider options in the kinds of watches and watch movements they assemble.

Fourth, the Departments propose changes in § 303.3(a), which sets forth the procedure for establishing the quantity of watch units, and territorial shares thereof, which may enter duty-free into the customs territory of the United States each year. The existing provision requires that a proposed and final rule be published in the *Federal Register* by October 31 and December 31, respectively, each year. We propose the elimination of specific dates for the publication of these two notices. This will give greater flexibility to the administration of the program and result in quantities established on the basis of more complete statistical data. We also propose eliminating the requirement for an annual rulemaking for this purpose when, after considering the statutory and regulatory criteria, the Departments conclude there is no need to change the quantity or territorial shares established the previous year. This change would avoid unnecessary costs without affecting the Departments' ability to achieve program purposes.

Fifth, the proposed rule modifies § 303.14(a)(1)(i) to increase the total dollar amount of wages per person that the Departments can consider in calculating the producers' allocations and PICs. The current limit of \$28,000 was established in 1983. We propose to raise the limit to \$32,000 in order to help producers attract and retain the managerial talent necessary to operate efficient watch assembly plant.

Classification

Executive Order 12291

In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Department of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to 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 government agencies, or geographic regions; or
- (3) 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.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than \$10 million per year.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands, Northern Mariana Islands.

For reasons set forth above, we propose to amend Part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note)

§ 303.1 [Amended]

2. Section 303.1(a) is amended by changing the words "Headnote 6 of Schedule 7, Part 2, Subpart E of the Tariff Schedules of the U.S. ("Headnote 6")" to "U.S. Legal Note 5 to Chapter 91 of the Harmonized Tariff Schedule of the United States ("91/5")".

§§ 303.1, 303.2, 303.5, and 303.14 [Amended]

3. The terms "Headnote 6" and/or "headnote 3(a)" are changed to read "91/5" each time they appear in 303.1 (a) and (b), 303.2(a) (10), (13), and (14), 303.5(b)(7) and 303.14(a)(1)(i).

4. Section 303.3(a) is revised to read as follows:

§ 303.3 Determination of the total annual duty-exemption.

(a) *Procedure for determination.* If, after considering the productive capacity of the territorial watch industry and the economic interests of the territories, the Secretaries determine that the amount of the total annual duty-exemption, or the territorial shares of the total amount, should be changed, they shall publish in the *Federal Register* a proposed limit on the quantity of watch units which may enter duty-free into the customs territory of the United States and proposed territorial shares thereof and, after considering comments, establish the limit and shares by *Federal Register* notice. If the Secretaries take no action under this section, they shall make the allocations in accordance with the limit and shares last established by this procedure.

§ 303.14 [Amended]

5. Section 303.14(a)(1)(i) is amended by changing "Eighty percent" to "Fifty percent" and "\$28,000" to "\$32,000".

6. Section 303.14(a)(1)(ii) is amended by changing "Twenty percent" to "Fifty percent".

7. Section 303.14(b)(3) is amended by changing "\$30" to "\$35" and "\$80" to "\$150".

Timothy N. Bergan,

Deputy Assistant Secretary for Import Administration.

Mark Hayward,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 88-23226 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-DS-M and 4310-93-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Nonpayment Policy for Consultative Examination Appointments That Are Not Kept

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to discontinue paying for consultative examinations in connection with the administration of the disability program under Titles II and XVI of the Social Security Act (the Act), when scheduled examinations are not kept, or the appointment is cancelled or rescheduled. Presently, the respective States decide whether to pay for appointments that are not kept. Twenty-two States have already stopped paying for such appointments. The proposed amendments will establish a uniform national policy with respect to this practice and result in savings to the Old-Age and Survivors and Disability Insurance Trust Funds and general funds in the U.S. Treasury.

DATE: To be sure that your comments are considered, we must receive them no later than December 6, 1988.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD. 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, MD. 21235 between 8:00 am and 4:30 pm on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-1759.

SUPPLEMENTARY INFORMATION: State agencies make disability determinations under Title II and Title XVI of the Act, regulations issued by the Department of Health and Human Services, and other written guidelines. The Social Security Administration currently pays each State agency from the Old-Age, Survivors and Disability Insurance Trust Funds (for Title II claims) or from general funds of the U.S. Treasury (for Title XVI claims) for 100 percent of allowable expenditures it incurs in making disability determinations under the Act. The State agency is responsible for determining whether an individual is disabled under the Act, regulations and other written guidelines, and for ensuring that adequate evidence supports the disability determination. To assist in making a proper disability determination, the State agency is authorized under the Act and the regulations to purchase medical and

psychological examinations, X-rays, and laboratory tests on a consultative basis in addition to obtaining evidence from the treating physician or other treating source.

Eliminating payments under the Title II and the title XVI disability programs for consultative examination appointments that are not kept would result in more efficient fiscal management of the disability programs and in savings in excess of \$7.5 million over a 5-year budget cycle. Twenty-two States already have a policy of not paying for those appointments. A nationwide nonpayment policy would also provide a consistent policy for all the States to follow.

The current policy at 20 CFR 404.1624 and 416.1024 provides that the State agencies are to determine the rate of payment used for purchasing medical or other services necessary to make disability determinations. The current regulations do not address the issue of payment or nonpayment for consultative examination appointments that are not kept. Policy of this issue has been left to the discretion of the States.

We propose to amend 20 CFR 404.1624 and 416.1024 to provide that SSA will no longer pay State agencies for any payments made to consultative examination providers for services not rendered because a scheduled consultative examination appointment was not kept.

Some States may have entered into written or oral agreements with their consultative examination providers. It is possible that such an agreement provides for a specific rate of payment for consultative examination appointments that are not kept. Where a State has entered into such agreements with their consultative examination providers prior to publication of the regulations, the Social Security Administration will not apply the regulations to those providers until 6 months after publication of the final regulations. Providing this 6-month period where there is a preexisting agreement will allow States to make arrangements with the consultative examination providers for the new nonpayment policy. Where preexisting agreements do not exist, the regulations will be effective upon publication in final.

Paragraph (a) of proposed §§ 404.1519k and 416.919k, published in the *Federal Register* (52 FR 13014) on April 20, 1987, in a notice of proposed rulemaking pertaining to standards for consultative examinations, also covers the purchase of medical examinations, laboratory tests, and other services. Therefore, when we publish the final

regulations pertaining to standards for consultative examinations, § 404.1519k will contain a cross reference to § 404.1624, and § 416.919k will contain a cross reference to § 416.1024.

Regulatory Procedures*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule.

The payment policy in 22 States does not provide for payment for consultative examination appointments that are not kept thus saving the Federal government and those State agencies collectively from \$2.1 to \$302 million annually. In contrast, 28 States provide at least partial payment for all or some types of consultative examination when a scheduled appointment is not kept. Of an estimated \$60 million paid annually for consultative examinations in these 28 States collectively, about \$1.5 million is provided for consultative examination appointments that are not kept. Eliminating payments under the Disability Insurance and Supplemental Security Income programs for consultative examination appointments that are not kept could result in Federal savings in excess of \$7.5 million over the 5-year budget cycle.

Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only a small number of physicians and other medical providers who perform consultative examinations for the evaluation of disability under Title II and Title XVI of the Social Security Act.

Paperwork Reduction Act

These regulations impose no reporting/recording requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability

benefits, Public assistance programs, Supplemental Security Income.

Dated: July 14, 1988.

Dorcas Hardy,

Commissioner of Social Security.

Approval: August 30, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 404, Subpart Q, Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950 —)

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

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

2. Section 404.1624 is revised to read as follows:

§ 404.1624 Medical and other purchased services.

(a) The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.

(b) Payment made to consultative examination providers for services not rendered because of scheduled consultative examination was not kept, whether the State agency is funded by an advance of funds or through reimbursement, will not be allowed as a necessary cost in administration of the disability program.

For the reasons set out in the preamble, Part 416, Subpart J, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

3. The authority citation for Subpart J continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c, 1383, and 1383b.

4. Section 416.1024 is revised to read as follows:

§ 416.1024 Medical and other purchased services.

(a) The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. The rates may not exceed the highest rate paid by Federal or other agencies in the State for the same or similar type of service. The State will maintain documentation to support the rates of payment it uses.

(b) Payment made to consultative examination providers for services not rendered because a scheduled consultative examination was not kept, whether the State agency is funded by an advance of funds or through reimbursement, will not be allowed as a necessary cost in administration of the disability program.

[FR Doc. 88-23218 Filed 10-6-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program; Reopening of Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule: extension of comment period.

SUMMARY: OSMRE is reopening the public comment period on the adequacy of proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides the Pennsylvania Department of Environmental Resources (DER) with the discretionary authority to accept reclamation in lieu of cash payments to satisfy civil penalty debts.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the revised amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on

November 7, 1988 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9:00 am on November 1, 1988. Requests to present testimony at the hearing must be received on or before 4:00 pm on October 24, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Pennsylvania program, the revised proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed revised amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Pennsylvania Department of Environmental Resources, Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4686.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information regarding general background on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register (47 FR 33050-33083). Subsequent actions concerning the conditions of approval

and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

By letter dated August 21, 1986 (OSMRE Administrative Record No. PA 609), the Pennsylvania DER submitted to OSMRE a proposed amendment to revise the Pennsylvania program. The proposal would change the civil penalty program by providing DER with the option of accepting reclamation of coal mine affected lands as legal tender from persons owing civil penalties in lieu of sum certain cash payments. OSMRE published a notice announcing receipt of this amendment and the opening of the public comment period in the October 3, 1986, *Federal Register* (51 FR 35370-35372). The public comment period ended November 3, 1986. During OSMRE's initial review of this proposed amendment, eleven issues or concerns were identified as requiring revision or clarification. These issues were sent to DER by letter (OSMRE Administrative Record Number PA 633) on February 6, 1987. OSMRE and DER conducted numerous meetings and exchanged communications on the issues identified, especially Issue Number 1 and Issue Number 2 dealing with site and operator eligibility respectively, since these two issues cover the fundamental provisions of the amendment. Reaching an accord with OSMRE on these two issues, DER addressed the other issues and submitted a revised proposed amendment (OSMRE Administrative Record Number PA 698) on July 26, 1988.

To insure comments are properly considered, OSMRE is restricting its request for comments to this revised amendment, PA 698, dated July 26, 1988.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comments on whether the revised amendment proposed by Pennsylvania satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 pm on October 24, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 30, 1988.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 88-23212 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Determination of Training Time During Nonstandard Terms

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The law states the number of credit hours in which a veteran must be enrolled in order to be considered a full-

time student during a standard term for Veterans Administration (VA) purposes. It does not contain a similar statement for terms which are shorter than standard. The VA has provided for measurement for these accelerated terms through regulation. In determining the length of an accelerated term, it has been the VA's policy not to count vacation periods of seven days or more. However, this policy has not appeared in the Code of Federal Regulations. Since the regulation goes into detail concerning measurement during a nonstandard term, but omits this policy, users of the regulation have sometimes interpreted it as overriding the unstated policy. This results in underpayments to veterans and servicepersons. The proposed amended regulation will prevent these underpayments.

DATES: Comments must be received on or before November 9, 1988. Comments will be available for public inspection until November 25, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 am to 4:30 pm, Monday through Friday (except holidays) until November 25, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.4272(g) is proposed to be amended to clarify that vacation periods of seven days or more are not to be counted in determining the length of nonstandard terms when the VA is measuring a veteran's or a serviceperson's enrollment for the purpose of determining the monthly rate of his or her educational assistance allowance.

The VA has determined that this proposed amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no 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 Administrator of Veterans Affairs has certified that this proposed amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 9, 1988
Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

38 CFR Part 21, *Vocational Rehabilitation and education*, is proposed to be amended by revising

§ 21.4272(g)(2) and adding an authority citation to read:

§ 21.4272 Collegiate course measurement.

- (g) * * *
- (2) In determining whole weeks for this formula the VA will—
- Determine the number of days from the beginning to the end of the term as certified by the educational institution, subtracting any vacation period of 7 days or more;
 - Divide the number of days in the term by 7;
 - Disregard a remainder of 3 days or less, and
 - Consider 4 days or more to be a whole week.

(Authority: 38 U.S.C. 1788(b))

* * * * *

[FR Doc. 88-23128 Filed 10-6-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5450

[AA-230-08-6310-02]

Sales of Forest Products

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking, notice of extensions of comment period.

SUMMARY: A proposed rulemaking that would amend 43 CFR Part 5450 to

require certain Federal timber purchasers to provide additional security before being awarded a new timber purchase contract was published in the Federal Register on August 17, 1988 (54 FR 31055), with a 30-day comment period. Notice is hereby given that the comment period is being extended to October 17, 1988, in response to public request.

DATE: The period for the submission of comments is hereby extended to October 17, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management, 1800 "C" Street NW., Room 5555 Main Interior Bldg., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Lyndon Werner, (202) 653-8864.

September 30, 1988.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88-23153 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-64-M

Notices

Federal Register

Vol. 53, No. 195

Friday, October 7, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Teepee Butte Recovery Project; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the Teepee Butte Fire Recovery project within the Hells Canyon National Recreation Area, Wallowa-Whitman National Forest, Wallowa County, Oregon. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so the interested and affected people are aware of how they may participate and contribute the final decision.

DATE: Comments concerning the scope of this analysis must be received by November 15, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental statement to N. Bruce Kaufman, Timber Staff, Wallowa-Whitman National Forest, Baker, Oregon 97814; phone (503) 523-6391.

SUPPLEMENTARY INFORMATION: In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. One of these is no action. Other alternatives will consider various intensives for harvest of fire killed timber and recovery of the forest resources such as

planting of trees and other stream shading vegetation.

Forest Supervisor, Wallowa-Whitman National Forest, Baker, Oregon is the responsible official.

Public participation will be especially important during several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determine potential cooperating agencies and task assignments.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March, 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

It is very important that those interested in the Teepee Butte Timber Salvage project participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible any may address the adequacy of the statement or the merit 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 DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewers' position and contentions, Vermont Yankee Nuclear Power Corp. V. NRDC, 435 U.S. 519 (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. Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334 (E.D. Wis. 1980). The reason for this is to ensure the substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS. The Final EIS is scheduled to be completed by June, 1989.

In the Final EIS the Forest Service is required to respond to the comments and responses received during the comment period on the environmental consequences discussed in the Draft EIS, and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to Forest Service Appeal Regulations.

Date: September 30, 1988

William R. Gast, Jr.,

Deputy Forest Supervisor.

[FR Doc. 88-23217 Filed 10-6-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35)

Agency: Bureau of the Census.

Title: Manufacturers' Shipments, Inventories, and Orders.

Form Number: M-3.

Type of Request: Revision.

Number of Responses: 64,800.

Burden: 21,600 hours.

Avg Hours Per Response: 20 minutes.

Needs and Uses: This is the only survey that provides monthly statistical information to Government and industry on the entire manufacturing sector of the economy. These statistics are an essential part of the development of the GNP accounts. The survey is designated a "principal Federal economic indicator"

by the Office of Information and Regulatory Affairs.

Affected Public: Businesses or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-23222 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: March 12 Employment from IRS Form 941E.

Form Number: IRS 941E; OMB-0607-0203.

Type of Request: Revision.

Burden: 60,000 respondents; 6,000 burden hours.

Avg Hours Per Response: 6 minutes.

Needs and Uses: Employment information from IRS 941E updates the Standard Statistical Establishment List (SSEL). The SSEL, as a universal sampling frame of U.S. business activity, requires employment data from all sectors of the economy.

Affected Public: State or local governments; businesses; and non-profit institutions.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-23223 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Vacant/Delete Check.

Form Number: D-160.

Type of Request: New.

Burden: 144,069 hours.

Avg Hours Per Response: 1 minute.

Number of Responses: 8,626,891.

Needs and Uses: The Vacant/Delete Check is one of the coverage improvement activities of the 1990 decennial census. It is used to verify that housing units enumerated as "vacant" or "delete" during previous census operations were correctly classified. Enumerators revisit these units to verify their status. Housing units that became occupied after Census Day are accounted for during this coverage improvement procedure.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-23224 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[(C-122-803), (C-557-802), (C-583-802)]

Extension of the Due Dates for the Final Countervailing Duty Determinations: Certain Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Malaysia and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioner in these investigations, we are extending the due dates for the final determinations in these investigations to correspond to the date of the final determinations in the antidumping duty investigations of the same products from Canada, Hong Kong, Japan, Malaysia and Taiwan pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1671d(a)(1)). These final determinations are now due not later than December 6, 1988. Because the preliminary countervailing duty determination on imports of the subject merchandise from Taiwan was affirmative, pursuant to section 705 of the Act and Article 5, paragraph 3 of the Subsidies Code, the Department will terminate the suspension of liquidation of entries of the subject merchandise from Taiwan 120 days after the date of publication of the preliminary countervailing duty determination.

EFFECTIVE DATE: October 7, 1988.

FOR FURTHER INFORMATION CONTACT:

Vincent P. Kane or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5414 or 377-2438.

SUPPLEMENTARY INFORMATION: On July 18, 1988, we issued preliminary negative countervailing duty determinations in the investigations involving Canada (53 FR 27738, July 22, 1988), and Malaysia (53 FR 27740, July 22, 1988), and a preliminary affirmative determination in the investigation involving Taiwan (53 FR 27742, July 22, 1988). On August 22, 1988, in accordance with section 705(a)(1) of the Act, we received a request from the petitioner, Triplex Inter Control (USA), Inc., to extend the due date for the final countervailing duty determinations to correspond to the date of the final determinations in the

antidumping duty investigations of the same products from Canada, Hong Kong, Japan, Malaysia, and Taiwan. Accordingly, we are granting an extension of the due dates for the final determinations in these investigations from October 3, 1988, to not later than December 6, 1988.

In accordance with section 705 of the Act and Article 5, paragraph 3, of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation of entries of the subject merchandise from Taiwan on November 21, 1988, which is 120 days from the date of publication of the preliminary determination in the countervailing duty investigation involving Taiwan. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters from Taiwan on or after November 21, 1988. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order in that case. The U.S. Customs Service, however, will continue to suspend liquidation of any entries, or withdrawals from warehouse, for consumption, made during the period July 22, 1988, through November 20, 1988, until the conclusion of the countervailing duty investigation involving Taiwan.

September 30, 1988.

Jan W. Mares,
Assistant Secretary for Import
Administration.

[FR Doc. 88-23227 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications For Duty-Free Entry of Scientific Instruments; Howard University Hospital et al.

Pursuant to section 6(c) of the Education, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 am and 5:00 pm in room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-270

Applicant: Howard University Hospital, Dept. of Pathology, 520 W. Street, NW., Washington, DC 20059.

Instrument: Electron Microscope, Model CM-10PC with Accessories.

Manufacturer: N.V. Philips, The Netherlands.

Intended Use: The instrument will be used for studies involving observing and classifying the changes in human tissue caused by disease. In addition, the instrument will be used for resident training.

Application Received by
Commissioner of Customs: August 17, 1988.

Docket Number: 88-271

Applicant: University of Colorado, Boulder, Department of Electrical and Computer Engineering, Campus Box 225, Boulder, CO 80309-0425.

Instrument: Electron Microscope, model H-800NA with Accessories.

Manufacturer: Hitachi, Japan.

Intended Use: The instrument will be used to investigate the chemical and crystal structural characteristics of advanced electron and ceramic materials. In addition, the instrument will be used in characterization of polycrystalline aggregates of superconducting ceramics and other ceramics using electron diffraction, bright-field imaging and x-ray analysis. Teaching purposes in courses in electrical and computer engineering at the undergraduate and graduate level.

Application Received by
Commissioner of Customs: August 18, 1988.

Docket Number: 88-273

Applicant: University of Houston, 4800 Calhoun, Houston, TX 77004.

Instrument: Electron Microscope, Model JEM 2000FX/SEG/SIP/DP.

Manufacturer: JEOL Ltd., Japan.

Intended Use: Studies of solid state materials, specifically metals, ceramics, superconductors, semiconductors and new novel combinations. The experiments will include determination of the atomic arrangements, defects, and chemical characterizations of each material. Major applications include interface characterizations involved in phase transformations in metals, ceramics and composites, and artificial superlattices in semiconductors and superconductors. In addition, the instrument will be used to train students how to collect, analyze, and interpret structural and chemical data on metals, ceramics, superconductors, semiconductors and other solids.

Application Received by
Commissioner of Customs: August 18, 1988.

Docket Number: 88-274

Applicant: NASA—Johnson Space Center, SN2, Planetary Science, NASA Rd. 1, Houston, TX 77058.

Instrument: Gas Isotope Ratio Mass Spectrometer, MAT 241 EM.

Manufacturer: Finnigan MAT, West Germany.

Intended Use: High precision isotopic ratio analysis of gases of selected elements including, but not limited to hydrogen, carbon, oxygen, nitrogen and sulfur. The overall objective of the investigations is the study of the elemental and isotopic evolution of the organogenic elements of solid objects in the solar system, especially the moon, meteorites, and cosmic dust samples. The identification studies will also be conducted to identify possibly different chemical components which may have contributed to the formation of the solar system. Biological investigations will include: (1) Human energy measurements, (2) total body fluids and volume measurements in zero-gravity, (3) dietary changes, (4) respiratory processes in closed environments, and (5) blood chemistry changes.

Application Received by
Commissioner of Customs: August 19, 1988.

Docket Number: 88-275

Applicant: Vanderbilt University School of Medicine, Medical Center North—CC2218, Nashville, TN 37232.

Instrument: Signal Conditioner—Processor for Ventricular Volume Measurement, Model SIGMA-5.

Manufacturer: Stichting LEYCOM, The Netherlands.

Intended Use: Studies of the left ventricular pressure-volume relation, both in the dog lab and in patients studied in the human cardiac catheterization laboratory. Pressure-volume relations will be used to characterize the diastolic and systolic properties of the left ventricle under a variety of experimental conditions.

Application Received by
Commissioner of Customs: August 22, 1988.

Docket Number: 88-276

Applicant: Albert Einstein College of Medicine of Yeshiva University, 1300 Morris Park Avenue, Bronx, NY 10461.

Instrument: Mass Spectrometer, MAT 90.

Manufacturer: Finnigan, West Germany.

Intended Use: Mass spectrometry studies of peptides, lipids, carbohydrates, nucleotides, nucleic acids and cellular metabolites. The experiments to be conducted will be research experiments to identify the nature of gene products, intermediates in cellular pathways and cell structural materials. The objectives pursued in the course of these investigations will be to establish the nature of cellular processing of biological materials, the structures of normal and mutant proteins and the pathways of cellular metabolites. In addition, the instrument will be used to teach theory and methods of macromolecular analysis.

Application Received by
Commissioner of Customs: August 22, 1988.

Docket Number: 88-277

Applicant: Children's Medical Center, 5300 E. Skelley Drive, P.O. Box 35648, Tulsa, OK 74135.

Instrument: Rapid Karyotyping System. Cytoscan RK1.

Manufacturer: Image Recognition Systems, United Kingdom.

Intended Use: The instrument will be used for research which relates to the identification of chromosome abnormalities in individuals with various genetic conditions including multiple birth defects. In addition, the instrument will be used in genetic-related educational enrichment programs for undergraduate, graduate and medical students and residents who have an interest in human genetics.

Application Received by
Commissioner of Customs: August 23, 1988.

Docket Number: 88-278

Applicant: University of Illinois at Urbana, Purchasing Division, 207 Henry Administration Bldg., 506 Wright Street, Urbana, IL 61801.

Instrument: Pulsed UV & Dye Laser, Model LPX205i/FL 3002.

Manufacturer: Lambda Physik, West Germany.

Intended Use: Studies of short lived chemical intermediates.

Application Received by
Commissioner of Customs: August 23, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-23228 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-08-M

National Institute of Standards and Technology

[Docket No. 80857-8157]

Continuation of Precision Measurement Grants Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Announcement of Continuation of the NIST Precision Measurement Grants Program.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Services; 11.609

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology (NIST) is continuing a \$180,000 per year program of research grants, formally titled Precision Measurement Grants, to scientists in U.S. academic institutions for significant, primarily experimental research, in the field of precision measurement and fundamental constants. Applications are not being accepted for two new NIST Precision Measurement Grants to be awarded beginning October 1, 1989 (fiscal year 1990). Each grant is in the amount of \$30,000 per year, renewable at NIST's option for up to two additional years, for a total of \$90,000.

Closing Date for Applications: February 1, 1989, is the deadline for applying for the FY 90 awards.

FOR FURTHER INFORMATION CONTACT: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Bldg. 220, Rm. B258, National Institute of Standards and Technology, Gaithersburg, MD 20899. (301) 975-4220.

SUPPLEMENTARY INFORMATION: As authorized by section 2 of the Act of March 3, 1901 as amended (15 U.S.C. 272), the National Institute of Standards and Technology (NIST) conducts directly, and through grants and contracts, a basic and applied research program in the general area of precision measurement and the determination of fundamental constants of nature. As part of this research program, NIST has since 1970 awarded Precision Measurement Grants to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants.

NIST is now accepting applications for two new \$30,000 grants to be awarded for the period October 1, 1989 through September 30, 1990 (fiscal year 1990). At NIST's option, each grant may

be renewed for up to two additional years for a total of \$90,000.

NIST sponsors these grants to encourage basic, measurement-related research in U.S. colleges and universities and to foster contacts between NIST scientists and those researchers in the U.S. academic community who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for workers in U.S. academic institutions to pursue new measurement ideas for which other sources of support may be difficult to find. The Precision Measurement Grants Program does not involve the payment of any matching funds from a state or local government and does not directly affect any state or local government. Accordingly, NIST has determined that Executive Order 12372 is not applicable to the Precision Measurement Grants Program. This notice does not contain policies with federalism with implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Research Topics/Who May Apply

There is considerable latitude in the kind of research projects which will be considered for support under the Precision Measurement Grants Program. The key requirement is that they generally support NIST work in the field of basic measurement science, for example:

Experimental and theoretical studies of fundamental physical phenomena to test the basic laws of physics or which may lead to improved or new fundamental measurement methods and standards.

The determination of important fundamental physical constants.

The development of new standards for physical measurement of the highest possible precision and accuracy.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

"Measurement of fundamental constants using three-level resonances in hydrogen," Carl E. Wieman, University of Michigan.

"Quantum limited measurement of a harmonic oscillator," William C. Oelfke, University of Central Florida.

"Fine-Structure constant determination using precision Stark spectroscopy," Michael G. Littman, Princeton University.

"Eötvös experiment—cryogenic version," D.F. Bartlett, University of Colorado.

"A test of local Lorentz invariance using polarized ^{21}Ne nuclei," T.E. Chupp, Harvard University.

"A new method to search for an electric dipole moment of the electron," L.R. Hunter, Amherst College.

"High precision timing of millisecond pulsars," D.R. Stinebring, Princeton University.

Procedures

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

Candidates are requested to submit a preapplication proposal to NIST by February 1, 1989 using standard form 424 with a description of their proposed work of no more than five double spaced pages.

Three copies should be sent to Dr. Barry N. Taylor at the address shown above.

On the basis of this material, four to eight semi-finalist candidates will be selected by the NIST Precision Measurement Grants Committee and the Outside Advisory Committee to submit more detailed proposals. The same committees will evaluate the detailed proposals, and on the basis of their evaluation, the two grantees for fiscal year 1989 will be selected. The semi-finalists will be notified of their status by March 15, 1989, and will be requested to submit their full proposals to NIST by May 1, 1989. The successful grantees will be notified of their selection by August 15, 1989.

The criteria to be used in evaluating the preapplication proposals and full proposals include:

1. Importance of the proposed research to science—does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to measurement science—is there a possibility that it will lead to a new or improved basic measurement unit, physical standard, or measurement method? (Or to a better understanding of important, but already existing, measurement units, physical standards, or measurement methods?)

3. The feasibility of the research—is it likely that significant progress can be

made in a three year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors are given equal weight in the selection process.

Technical Questions concerning the NIST Precision Measurement Grants Program may be directed to the above address or call Dr. Taylor on (301) 975-4220.

Paperwork Reduction Act

The standard form 424 referenced in this notice is subject to the Paperwork Reduction Act and has been cleared under Office of Management and Budget (OMB) Control Number 0348-0006.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay debt.

Administrative Information

Contact Grants Office, Office of Acquisition and Assistance Division, Building 301 Room B143, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-6328.

Dated: October 3, 1988.

Raymond G. Kammer,

Deputy Director.

[FR Doc. 88-23156 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-13-M

American National Standard Orifice Metering of Natural Gas; Announcement of Intent To Revise and Request for Review and Additional Data Information

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to revise and request for comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API) and allied organizations—the American Gas Association, the Gas Processors' Association, and the Chemical Manufacturers' Association—propose to revise ANSI/API 2350, "Orifice Metering

on Natural Gas and Related Hydrocarbon Fluids." The purpose of this notice is to increase public participation in that revision by announcing the intention to revise, by inviting review of material and data used to revise the standard, and by inviting participation in the standards process. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in this notice.

DATES: Interested persons may contact the person listed below.

ADDRESS: J.K. Walters, American Petroleum Institute, Measurement Coordination Department, 1220 L Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: J.K. Walters.

Background

The American Petroleum Institute develops and publishes voluntary standards for the measurement of petroleum and natural gas and its products. These standards are used by companies and by governmental agencies which often incorporate them by reference or in whole into their regulations.

Currently, Chapter 14.3, "Orifice Metering of Natural Gas and Related Hydrocarbon Fluids," of the Petroleum Measurement Standards, also known as AGA Report No. 3 and GPA 8185, is undergoing the first substantive, significant revision in 50 years, based on the largest comprehensive database gathered to date. The intent is to revise the standard's orifice discharge coefficients and formulae. This standard has worldwide usage and is referenced in thousands of contracts. Therefore, it is of great interest and users should be aware of the revision process. The revised standard will be published in sections beginning in early 1989.

Requests for Input

Send all inquiries to J. K. Walters, American Petroleum Institute, Measurement Coordination Department, 1220 L Street NW., Washington, DC 20005. Interested persons are urged to submit any data on the orifice metering of natural gas and related fluids to API and its associated organizations for consideration immediately. Interested persons may also request to see data on which the standard will be revised, draft model equations ("Gas Revision Package"), information about committee

meetings associated with the standard revision, and the publication schedule.

Date: October 3, 1988.

Raymond G. Kammer,
Acting Director.

[FR Doc. 88-23155 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Public Hearing on South Carolina Request To Amend the South Carolina Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Public Hearing Notice.

Public Hearing on South Carolina Request To Amend the South Carolina Coastal Management Program: Notice is hereby given that the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the State of South Carolina's request to amend its federally approved Coastal Management Program by incorporating the 1988 Beach Management Act. The hearing will also solicit comment on issues to be addressed as part of the Federal review of the request under the National Environmental Policy Act (NEPA).

The Hearing will be held on November 9, 1988, at 7:00 p.m. at: Mark Clark Auditorium, The Citadel, Hagood Avenue, Charleston, South Carolina.

The Beach Management Act was signed into law on June 7, 1988. The Act establishes development restrictions and State and local planning requirements for the expressed purpose of implementing a gradual retreat of development from the shoreline so as to protect life and property from coastal erosion and storm damage, and to preserve the integrity of the beach/dune system. Incorporation of this Act into the South Carolina Coastal Management Program will enable the State to use Federal financial assistance and the provisions of Federal consistency under the Coastal Zone Management Act to implement the law.

All interested persons and organizations are invited to express their views. Oral presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of 5 minutes. Persons requiring additional information on this action should contact OCRM. Written

comments will be accepted until November 9, 1988, and may be submitted at the hearing or sent to: Mr. William Millhouser, Gulf and South Atlantic Regional Manager, Office of Ocean and Coastal Resource Management, 1825 Connecticut Ave., NW, Washington, DC 20235, (202) 673-5138.

No verbatim transcript of the hearing will be prepared, but OCRM staff present will record the general thrust of the remarks. All comments received at this hearing and in writing before the above date will be fully considered in the development of NEPA documents and the final decision on the approval of the State's request.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: October 5, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88-23300 Filed 10-6-88; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 7, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 29, August 12 and August 19, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 28681, 30459 and 31735) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926). After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1988:

Commodity

Case, Map and Photograph

8460-00-368-4281

Services

Janitorial/Custodial

Domiciliary Buildings 8A, 10A, 14 A&B, 16 A&B, 25 and 34, VA Medical Center, Dublin, Georgia.

Janitorial/Custodial

Lycoming Memorial USARC, 1605 Four Mile Drive, Williamsport, Pennsylvania.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 88-23210 Filed 10-6-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: November 7, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Candle, Illuminating, 6260-00-840-5578.

Service

Commissary Warehouse Service, Nellis Air Force Base, Nevada.

Deletions

It is proposed to delete the following services from Procurement List 1988, December 10, 1987 (52 FR 46926): Furniture Rehabilitation at the following locations: Altus Air Force Base, Oklahoma, Lawton, Oklahoma including Fort Sill, Oklahoma City, Oklahoma, plus 25-mile radius, including FAA and Tinker Air Force Base, San Antonio, Texas, plus 40-mile radius, Wichita Falls, Texas, including Sheppard Air Force Base.

E.R. Alley, Jr.

Acting Executive Director.

[FR Doc. 88-23211 Filed 10-6-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Renewal of the Ada Board**

ACTION: Renewal of the Ada Board.

SUMMARY: Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Ada Board has been determined to be in the public interest and has been renewed.

The Ada Board provides a balanced source of advice and information on the technical and policy aspects of establishing Ada as a common, high-order computer programming language in the Department of Defense. It is expected that the Ada Board will continue to address issues associated with the direction of the Ada program, the requirements for modifying the current Ada language standard in accordance with the American Standards Institute, and the processing of Ada language commentaries.

October 4, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-23174 Filed 10-6-88; 8:45 am]

BILLING CODE 3810-01-M

Medical and Dental Reimbursement Rates for Fiscal Year 1989

Notice is hereby given that the Principal Deputy Assistant Secretary of Defense (Comptroller) in a September 23, 1988, memorandum to the Assistant Secretary of Defense (Health Affairs), Assistant Secretaries of the Army and Navy (Financial Management), and Comptroller of the Air Force established reimbursement rates for inpatient and outpatient medical and dental care provided during fiscal year 1989 as follows:

	IMET ¹	Inter-agency ²	Other
Per inpatient day:			
Burn unit.....	\$1,126	\$1,890	\$2,020
General medical and dental care.....	191	458	494
Per outpatient visit....	23	62	67
Per FAA air traffic controller examination.....		91	

¹ International Military Education and Training students.

² Other Federal Agency-sponsored patients and Government civilian employees and their dependents outside the United States.

³ DoD civilian employees located in overseas areas shall be provided a bill when the services are performed. Payment is due 60 days from the date of the bill.

The per diem rate (supplies and subsistence) charged to dependents of military personnel in Federal medical facilities shall become \$8.05 per day beginning January 1, 1989.

October 4, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-23231 Filed 10-6-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force**Intent To Prepare an Environmental Impact Statement (EIS) on the Proposed Electronic Combat Test Capability Program at the Utah Test and Training Range**

The United States Air Force will accomplish a tiered environmental impact analysis process concerning the phased upgrade of the existing Utah Test and Training Range (UTTR) to support an electronic combat test

capability. The UTTR is a major range and test facility base in Northwestern Utah, with airspace extending into Eastern Nevada. The range is operated for the Department of Defense by the Air Force Flight Test Center, Edwards AFB, California. The UTTR provides range facilities for all phases of the test and evaluation of manned and unmanned aircraft systems. The Air Force proposes to upgrade the UTTR mission to include a dedicated range which integrates electronic combat systems to support the various tests and evaluations of existing and future combat weapon systems. The UTTR will continue to support air/land battle training scenarios and strategic/special operations test requirements for the military.

The EIS, to be completed in mid-1989, supports the decisionmaking process associated with phased construction and operation of the system at increasing levels of capability from 1989 through the year 2000 at UTTR. It will also address the site-specific consequences of facility construction and other activities in fiscal years 1990 through 1993, to provide a near-term electronic combat test capability. The mature system would include facilities sited on Hill AFB, Utah, and at various locations within the UTTR. The specific construction and other activities for fiscal year 1994 and on will be addressed in subsequent environmental documentation. This tiered process allows the environmental documentation to "focus on the actual issues ripe for decision at each level of environmental review." (40 CFR 1502.20)

Public scoping workshops will be held in Delta, Ibapah, Ogden, Tooele, Utah and Wendover, Nevada during the week of 14 November 1988. All workshops will be conducted between 12 o'clock noon and 8:00 p.m. Air Force representatives will be available to meet and discuss plans for activities within the Range and seek public input on those issues to be addressed within the EIS. Exact times and locations of these workshops will be sent to public officials and the local media. For further information, please contact:

Lt. Col. Thomas Bartol,

AFRCE-BMS/DEP, Norton AFB CA 92409-6448.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-23132 Filed 10-6-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

October 5, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 25-27 October 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-23288 Filed 10-6-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

October 5, 1988.

The USAF Scientific Advisory Board Electronic Security Command Advisory Group will meet on 25-26 October 1988 from 8:00 a.m. to 5:00 p.m. at the Headquarters Electronic Security Command, San Antonio, Texas 78243-5000.

The purpose of this meeting is to review classified programs related to the Electronic Security Command mission. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-23289 Filed 10-6-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army**Armed Forces Institute of Pathology; Scientific Advisory Board; Meeting**

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, November 9 and 10, 1988, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC

20306-6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel Lloyd A. Schlaeppli, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306-6000, telephone 202-576-2900.

For the Director.

Lloyd A. Schlaeppli,

Colonel, MS, USA, Executive Officer.

[FR Doc. 88-23232 Filed 10-6-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Partially Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24-27 October 1988.

Time: 0800-1700 hours each day.

Place: Fort Hood, Texas.

Agenda: The 1988 Army Science Board Fall General Membership Meeting will include:

24 October, 0730-1700—Open

25 October, 0800-1300—Open

Briefings by Ft Hood personnel

1400-1630—Open

Functional Supgroup Meetings

26 October, 1300-1700 through COB 27 October—Closed

Subjects to be discussed include Army Testing, Technology Insertion, Directed Energy Weapons, Key Technologies, and a BAST overview. This portion of the meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-23133 Filed 10-6-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy**Naval Research Advisory Committee; Closed Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on October 25-26, 1988. The meeting will be held at the Marine Corps Base, Camp Pendleton, California. The meeting will commence at 8:00 am and terminate at 5:00 pm on October 25-26, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on Marine Corps operations and capabilities. The agenda will include briefings and discussions related to research development and technology issues affecting Marine Corps programs and operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4870.

Date: October 3, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88-23182 Filed 10-6-88; 8:45 am]

BILLING CODE 3810-AE-M

Privacy Act of 1974; Amended Record Systems**AGENCY:** Department of the Navy, DOD.**ACTION:** Notice of three amended systems of records subject to the Privacy Act.**SUMMARY:** The Department of the Navy is amending three systems of records subject to the Privacy Act, as amended, (5 U.S.C. 552a).**DATES:** This proposed action will be effective without further notice on or before November 7, 1988, unless

comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), The Pentagon, Room 5E521, Department of the Navy, Washington, DC 20350-2000, telephone 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the *Federal Register* as follows:

FR Doc 86-8485 (51 FR 12908) April 16, 1986
FR Doc 86-10763 (51 FR 18086) May 16, 1986
(Compilation)
FR Doc 86-12448 (51 FR 19884) June 3, 1986
FR Doc 86-19207 (51 FR 30377) August 26, 1986
FR Doc 86-19208 (51 FR 30393) August 26, 1986
FR Doc 86-28835 (51 FR 45931) December 23, 1986
FR Doc 87-1144 (52 FR 2147) January 20, 1987
FR Doc 87-1145 (52 FR 2149) January 20, 1987
FR Doc 87-5783 (52 FR 8500) March 18, 1987
FR Doc 87-9686 (52 FR 15530) April 29, 1987
FR Doc 87-10428 (52 FR 17294) May 7, 1987
FR Doc 87-13560 (52 FR 22671) June 15, 1987
FR Doc 87-27707 (52 FR 45846) December 2, 1987
FR Doc 88-10871 (53 FR 17240) May 16, 1988
FR Doc 88-12862 (53 FR 21512) June 8, 1988
FR Doc 88-13202 (53 FR 22028) June 13, 1988
FR Doc 88-15101 (53 FR 25363) July 6, 1988

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety. This notice is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of an altered system report.

October 4, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07220-2

System name:

Retired Pay System, (51 FR 18195, May 16, 1986).

Changes:

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete paragraph 9 in its entirety and substitute with: "To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy."

N07220-2

SYSTEM NAME:

Retired Pay System.

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former members of the Navy and Reservists receiving Retired or Retainer Pay; Survivors of members or reservists requesting Survivor Benefit Plan, Retired Serviceman's Family Protection Plan or Minimum Income Widow payments; Individuals eligible for National Oceanic and Atmospheric Administration retirement payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual retire pay and annuity pay records, statements of service, retirement orders, survivor benefit plan elections, W-4 and W-2 data, allotment data, death certificates, applications for annuities, correspondence from or to the member or annuitant or third parties relating to an individual account, documentation of mass change, e.g., cost of living increase, due to legislative change.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Subtitle C.

PURPOSE(S):

To compute retirement and annuity payments and to investigate and reconcile any underpayments, overpayments or claims. Data is used for fiscal reports and the extraction and compilation of statistical analyses and reports for management studies for internal use as required by the Department of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used for fiscal reports and the extraction and compilation of statistical analyses and reports for management studies for use externally required by Department of Labor, Department of Commerce or by other government agencies.

Records may be released to the Comptroller General or any of his authorized representatives in the course of the performance of duties of the Comptroller General. To the General Accounting Office for audits and determinations relating to military pay entitlements, expenditures and accounting procedures.

To the Department of Treasury in connection with check or Electronic Fund Transfer (EFT) payment issuance.

To the Veterans Administration in regard to Disability and Severance Pay and educational benefits.

To the Social Security Administration for FICA Wage reporting.

To the Internal Revenue Service and state and local taxing authorities for computing or resolving tax liability.

To the Federal Reserve Banks for the distribution of payments made through the Direct Deposit System, to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts, and federal, state, or local government agencies when payments received through the Retired Pay system impact payments or benefits issued by those agencies and/or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To designated beneficiaries of deceased member.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, and disc files, microfilm and file folders.

RETRIEVABILITY:

Social security number and member's name.

SAFEGUARDS:

The on-line system contains the following safeguards: a. Physical access to CRT data entry terminals is under supervisory control. b. Access to central computer mainframe, other peripheral equipment and tape and disc storage is strictly controlled. Individuals must sign in and be authorized admittance before access. c. Individual user identification codes and passwords are used to control access to automated records. d. Reports are issued that are used to help monitor individuals accessing the system. Access to microfiche and

microfiche readers and the respective data are maintained by supervisory control. During non-working hours, offices where records are stored are locked.

RETENTION AND DISPOSAL:

Records are retained for ten years after death of retiree or annuitant then shipped to a Federal Records storage facility. NOAA accounts are dropped upon retiree's death.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199.

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Information request must contain Navy member's full name and social security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Field disbursing offices, Navy Military Personnel Command, Navy Reserve Personnel Center, individual members, annuitants, financial organizations, designated guardians and conservators of retirees or annuitants, Veterans Administration, Social Security Administration, Office of Personnel Management, Internal Revenue Service, and federal, state and local courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07220-3

System name:

Reserve Pay System, (51 FR 18196, May 16, 1986).

Changes:

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete paragraph 7 in its entirety and substitute with: "To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual

assisted or his/her sponsor continues to be a member of the Navy."

N07220-3

SYSTEM NAME:

Reserve Pay System.

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active reservists drilling in pay units.

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance entitlements, monthly and yearly pay, and personnel data needed for pay computation and issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S. Code Chapter 11.

PURPOSE(S):

This information is used by officials and employees of the Navy Finance Center to issue checks and leave and earnings statements, investigate claims and overpayments, and to prepare financial reports. This information may be used by officials and employees in the Department of Defense, and the Naval Military Personnel Command to assist in updating, verifying or correcting their records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Internal Revenue Service and state or local tax authorities for use in computing or resolving member's tax liability.

To the Social Security Administration to determine member's coverage under that program.

To the Department of the Treasury for issuance of checks.

To the Veteran's Administration or to the Navy Family Allowance Activity when needed to process cases in the courts upon court order.

To the designated beneficiaries of deceased members.

To federal, state, or local government agencies when payments received through the Reserve Pay System impact on payments or benefits issued by those agencies and/or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives, or

related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and file folders.

RETRIEVABILITY:

Social Security number and name.

SAFEGUARDS:

Guards, personnel screening, requestor codes.

RETENTION AND DISPOSAL:

Microfilm record kept indefinitely in safekeeping.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199.

NOTIFICATION PROCEDURE:

Individuals may write to system manager at above address. Information request must contain Navy member's full name and social security number.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Disbursing Officers, individual members, BUPERS, and IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07220-5

System name:

Joint Uniform Military Pay System (JUMPS) (51 FR 18197, May 16, 1986).

Changes:

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete paragraph 8 in its entirety and substitute with: "To officials and employees of Navy Relief and the

American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy."

N07220-5

SYSTEM NAME:

Joint Uniform Military Pay System (JUMPS).

SYSTEM LOCATION:

(Decentralized) Navy and Marine Corps disbursing offices, i.e., Personnel Support Activities, Personnel Support Detachments, Disbursing Officers Afloat, and the Navy Finance Center. Specific activities are identified in Appendix B of Volume IV, Navy Comptroller Manual and addresses are contained in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All navy personnel on active duty and individual recipients of allotments of Navy personnel (active duty and retired).

CATEGORIES OF RECORDS IN THE SYSTEM:

individual Leave and Earnings Statements, Personnel Financial Records, substantiating documentation submitted via OCR documents, tape input or direct on-line CRT entry which authorized credits and deductions of pay entitlements and withholding of Federal income tax, Federal Insurance Contribution Act (FICA) payments, and Servicemen's Group Life Insurance, state and local taxes, or other deductions. Other records include Internal Revenue Form W-2's, money lists, pay receipts, check and distribution lists, allotment authorizations and associated files, absentee and deserter lists, miscellaneous correspondence requesting or providing pay information, Commanding Officer Leave Lists and microfilm and microfiche records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles 10 and 37 U.S.C.

PURPOSE(S):

To maintain and distribute Leave and Earnings Statements; determine and audit pay entitlements or deductions; compute, pay and report payments; determine budgets and appropriation requirements; commence and terminate allotments; determine amounts subject to fines, forfeitures or detentions of pay

in connection with non-judicial punishment and courts-martial and distribution of payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Comptroller General or any of his authorized representatives in the course of the performance of duties of the Comptroller General or the General Accounting Office in the audit and determinations relating to military pay entitlements, expenditures and accounting procedures.

To the Department of Treasury in connection with check of Electronic Fund Transfer (EFT) payment issuance.

To the Veterans Administration in regard to Disability and Severance Pay and educational benefits; Social Security Administration for FICA Wage Reporting.

To the Internal Revenue Service and state and local taxing authorities for computing or resolving tax liability.

To the Federal Reserve Banks for the distribution of payments made through the Direct Deposit System.

To financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

To federal, state, or local government agencies when payments received through the JUMPS system impact payments or benefits issued by those agencies or when a specific matching program has been requested by the agency and approved by the Office of Management and Budget.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties related to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Personal Financial Records containing Leave and Earnings Statements, which are paper records, are stored in wooden or metal boxes or cabinets. Copies of Leave and Earnings Statements and supporting documents are stored in file folders and cabinets or on microfilm or microfiche. Automated records are

stored on magnetic tapes, discs and punched cards.

RETRIEVABILITY:

Automated records are retrieved by Social Security Number and name. Documents are retrieved by SSN or by an assigned internal document control number.

SAFEGUARDS:

Outside of normal working hours Personal Financial Records with Leave and Earnings Statements are secured in safes, vaults or locked cabinets. Substantiating documents and microfilmed records are retained in unlocked cabinets. During non-working hours, offices where the above-mentioned records are stored are locked.

The safeguards in the on-line automated systems include the following controls: a. Physical access to CRT data entry terminals is under supervisory control. b. Access to central computer main frame, other peripheral equipment and tape and disc storage is strictly controlled. Individuals must sign in and be authorized admittance before access. c. Individual user identification codes and passwords are used to control access to automated records. d. Reports are issued that are used to help monitor the system to determine individuals who are accessing data.

Access to microfiche and microfiche readers and the respective data are maintained by supervisory control.

RETENTION AND DISPOSAL:

Personal financial records containing the twelve most recent leave and earnings statements are retained by the Personnel Support Detachment or disbursing office servicing the Command to which the member is assigned. Copies of originating documents are retained by the local command for one year after submission and then destroyed. A central automated file is maintained for all active duty Navy personnel at the Navy Finance Center, Cleveland. Following a member's separation or retirement from the Navy, the member's Personal Financial Record is forwarded to the central site-Navy Finance Center, Cleveland, where it is retained for approximately two months pending individual claims and is then forwarded to the Federal Records Center. The member's Master Pay Account is retained at the central site for six months following a member's separation or retirement at which time it is purged from the computer file, microfilmed, and forwarded to the Federal Records Center. Substantiating documents are

microfilmed and retained at the central cite for one year and then forwarded to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Navy; Commander, Naval Military Personnel Command; Commander, Navy Accounting and Finance Center; and Commanding Officer, Navy Finance Center.

NOTIFICATION PROCEDURE:

Individuals can be informed of any records maintained within the system by identifying themselves to the Personnel Support Detachment servicing that Command. The member may identify himself/herself by presenting his military identification card. Former members may request information from the Navy Finance Center, Cleveland.

RECORD ACCESS PROCEDURES:

Individuals, properly identified, may request any information pertaining to their pay from their Personnel Support Detachment. If the requested information is not available locally, the disbursing officer will obtain the information from other sources, i.e. members previous duty stations or the Navy Finance Center, Cleveland.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Local Personnel Support Detachments and other disbursing and personnel offices, the Veterans Administration, the Navy Military Personnel Command, various taxing agencies, individual members and recipients of allotments and various Navy procedures and entitlements manuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-23229 Filed 10-6-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy

concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Louis A. Salvador is under consideration for the position of Director, Clean Coal Projects Division, Morgantown Energy Technology Center (METC), Department of Energy. Mr. Salvador has an interest in the Westinghouse Electric Corporation Pension Plan as a result of his past employment by the company.

It has been established to my satisfaction that requiring Mr. Salvador to divest his interest in the Westinghouse Electric Corporation Pension Plan would impose an exceptional hardship on him and that such interest is a vested pension interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Salvador a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interest in the Westinghouse Pension Plan.

In accordance with section 208 of title 18, United States Code, Mr. Salvador will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the Westinghouse Electric Corporation, unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, in accordance with subsection (b) of section 606 of the Department of Energy Organization Act, Mr. Salvador will be directed not to participate for a period of one year since commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of Westinghouse Electric Corporation, or KRW Energy Systems Inc., unless the Secretary makes a written finding that the application of such prohibition would be contrary to the national interest.

John S. Herrington,
Secretary of Energy.

Date: September 29, 1988.

[FR Doc 88-23251 Filed 10-6-88; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsections (a), (b)(i), and (b)(ii) of section 207, title 18, United States Code, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Alvin W. Trivelpiece, formerly Director of the Office of Energy Research, Department of Energy, has a unique combination of outstanding scientific and technology qualifications and extensive experience in the management of research and development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Director of the Oak Ridge National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the funding, operation, and management of the Laboratory. I am satisfied that these activities are in a scientific or technological field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsections (a), (b)(i), and (b)(ii) of section 207, Title 18, United States Code, in consultation with the Director of the Office of Government Ethics, with respect to contact by Dr. Trivelpiece with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Date: September 29, 1988.

John S. Herrington,
Secretary of Energy.

[FR Doc 88-23252 Filed 10-6-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-605-000 et al.]

Wisconsin Power and Light Co. et al.;
Electric Rate, Small Power Production,
and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[ER88-805-000]

September 30, 1988.

Take notice that on September 14, 1988, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement dated July 1, 1988, between WP&L and Wisconsin Electric Power Company (WE). WP&L also submitted an Amendment, effective July 18, 1988, to the Interconnection Agreement between WP&L and WE. WP&L requests waiver of the notice requirements.

The Letter Agreement provides for WP&L to supply WE with 100 MW of Short Term Shared Risk Power beginning July 18, 1988 and ending Sept. 11, 1988; 60 MW of Short Term Shared Risk Power beginning June 1, 1989 and ending May 31, 1990; 150 MW of Limited Term Power beginning August 1, 1990 and ending May 31, 1991; 125 MW of Limited Term Power beginning June 1, 1991 and ending May 31, 1992; and 100 MW of Limited Term Power beginning June 1, 1992 and ending May 31, 1993.

The Amendment provides for the addition of new Service Schedule G—Short Term Shared Risk Power.

WP&L states that a duplicate original of both the Letter Agreement and the Amendment have been provided to WE and also that a copy of the herein has been mailed to each of the Parties identified on the Service List.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Wisconsin)

[Docket No. EL88-39-000]

September 30, 1988.

Take notice that on August 29, 1988, Northern States Power Company (Wisconsin), in accordance with § 35.14(a)(10) and 385.207 of the Commission's regulations, filed a request for conditional waiver of the Commission's fuel clause regulations. The company's submittal was tendered under Docket No. ER88-72-000.

According to the company, waiver is sought in order to obtain Commission approval, if needed, of the recovery through the fuel adjustment clause of certain payments made to coal suppliers under minimum take provisions of coal supply contracts. The company states that its fuel costs reflected certain payments recorded in account 151 during 1986, 1987, and 1988 associated with payments made to coal suppliers under minimum take provisions of certain coal supply contracts. The company believes that these amounts

were properly recorded in account 151 and therefore properly recovered through the fuel adjustment clause. Waiver is requested only in the event that the Commission ultimately determines that the payments should not be recorded in Account 151.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER88-610-000]

September 30, 1988

Take notice that on September 16, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Electric Service Agreement for a new point of delivery for Arkansas Valley Electric Cooperative, Inc. (AVEC). Service will be provided under OG&E's FERC ELECTRIC TARIFF 1st Revised Volume No. 1. Also included in this filing is a revised Index of Purchasers which includes the new AVEC point of delivery and updates other municipal points of delivery to accurately reflect those towns to whom the Company now supplies wholesale electric service.

OG&E requests an effective date of August 11, 1988, and therefore requests waiver of the Commission's notice of requirements. OG&E states that copies of this filing were served on Arkansas Valley Electric Cooperative, Inc. and the Commissions of Arkansas and Oklahoma.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this document.

4. Southern Company Services, Inc.

[Docket No. ER88-612-000]

September 30, 1988.

Take notice that on September 19, 1988, Southern Company Services, Inc. acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) tendered for filing an amendment to an interchange contract and service schedule between Southern Companies and Jacksonville Electric Authority. The amendment extends the term of a replacement energy schedule under the interchange contract and includes Savannah Electric and Power Company as a party to the interchange contract.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket No. ER88-601-000]

September 30, 1988.

Take notice that on September 9, 1988, West Texas Utilities Company (WTU) tendered for filing executed letter agreement, dated July 1, 1988, between WTU and the City of Coleman, Texas (Coleman) and a revised Rate Schedule COC-7, pursuant to which WTU provides partial-requirements service to Coleman. WTU and Coleman have agreed to a two-step increase in the customers charge applicable to Coleman, the first step to be implemented July 1, 1988, and the second step to be implemented at Coleman's option, upon 6 months notice to WTU. The increased customer charge agreed to by WTU and Coleman compensates WTU for increase expenses and additional investment associated with upgrading the WTU substation at the Coleman Delivery Point to permit Coleman to increase its off-peak capacity purchases from WTU.

WTU requests an effective date of July 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Coleman and the Public Utility Commission of Texas. Copies of the transmittal letter only were served upon WTU's other wholesale customers to advise them of the requested waiver of notice requirements.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ES88-64-000]

September 30, 1988.

Take notice that on September 23, 1988, Niagara Mohawk Power Corporation (the Company) tendered for filing an application pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew drafts issued pursuant to a Bankers Acceptance Facility Agreement in an aggregate principal amount outstanding at any time in an amount not exceeding \$100,000,000 and short-term unsecured notes, commercial paper and other obligations in an aggregate principal amount outstanding at any time in an amount not exceeding an amount equal to 10% of the aggregate of total consolidated surplus and secured indebtedness of the Company and its wholly-owned subsidiaries and the capital of the Company plus \$50,000,000 maturing, in each case, less than one year after the date of issuance. The short-term debt will be issued on or

before December 31, 1990, with a final maturity date no later than December 31, 1991.

Comment date: October 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ES88-65-000]

October 3, 1988.

Take notice that on September 26, 1988, Louisville Gas and Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than \$175,000,000 of short-term debt on or before December 31, 1990 with a final maturity no later than December 31, 1991.

Comment date: October 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Company

[Docket No. ER88-25-003]

October 3, 1988.

Take notice that on August 31, 1988, Pacific Power & Light Company tendered for filing, in accordance with Commission letter dated July 15, 1988, a compliance filing, and on September 23, 1988, a revised compliance report with a summary of the amounts collected subject to refund/payment computation of the interest, and the revised amounts due Bonneville Power Administration (Bonneville) or Pacific.

Copies of this filing have been served upon Bonneville, Emerald People's Utility District and the Oregon Public Utility Commission.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Colstrip Energy Limited Partnership

[Docket No. ER88-500-000]

October 3, 1988.

Take notice that on September 28, 1988, Colstrip Energy Limited Partnership (Partnership) tendered for filing, pursuant to 18 CFR 35.13, the Power Purchase Agreement Consent and Assignment executed on June 30, 1988 by AEM Corp., Rosebud Energy Corp., the Partnership, the Montana Power Company and Bank of New England, N.A. This agreement relates to the assignment of all of the rights, title and interest of AEM Corp. in the Cogeneration and Small Power Production Long-Term Power Purchase Agreement to the Partnership.

Copies of the instant filing have been served upon the Montana Power Company and the Public Service Commission of the State of Montana.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER88-616-000]

October 3, 1988.

Take notice that on September 13, 1988, Southwestern Public Service Company (Southwestern) tendered for filing an application for approval of a rider applicable to its full requirements electric service tariff for Lea County Electric Cooperative, Incorporated (Rate Schedule No. 103).

The proposed rider modifies Lea County's Determination of Demand on its current tariff schedule to reflect the diversity factor to be used to determine the estimated non-coincident measured kW demand at transmission and distribution delivery points.

Copies of the filing were served upon Lea County Electric Cooperative, Incorporated and the New Mexico Public Service Commission.

Comment date: October 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Gulf States Utilities Company

[Docket No. EL88-40-000]

October 3, 1988.

Take notice that on September 28, 1988, Gulf States Utilities Company (Gulf States) tendered for filing, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure, a request for the Commission to issue a Declaratory Order for the rights and obligations of Gulf States, and of Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn G. & T. Electric, Inc., and Sam Rayburn Municipal Power Agency (collectively Sam Rayburn). Gulf States states that an issuance of such an order would reflect the appropriate allocation of jurisdictional authority between this Commission and the district court in resolving the dispute between Gulf States and Sam Rayburn.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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,

Secretary.

[FR Doc. 88-23244 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6488-006 et al.]

Hydroelectric Applications (Alternative Energy Resources, Inc., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Transfer of License.

b. *Project No.:* 6488-006.

c. *Date filed:* August 25, 1988.

d. *Applicant:* Alternative Energy Resources, Inc. and Nugget Hydroelectric, L.P.

e. *Name of Project:* Big Mosquito Project.

f. *Location:* On Big Mosquito Creek in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Correspondence with the applicants should be directed to: H.L. Childers, Alternative Energy Resources, Inc. 9200 Shanley Lane Auburn, California 95603 and Alan Forbes, Nugget Hydroelectric, L.P., c/o Enervest Corporation, 6200 South Syracuse Way, Englewood, Colorado 80111.

i. *FERC Contact:* Nanzo T. Coley (202) 376-9416.

j. *Comment Date:* October 31, 1988.

k. *Description of Application:* The applicants request the transfer in order to facilitate financing of the project through a partnership financing structure. The license was issued on June 14, 1988, and would expire on May 30, 2028.

l. *This notice also consists of the following standard paragraphs:* B and C.

2 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7444-009.

c. *Date filed:* May 3, 1988.

d. *Applicant:* Willow River Hydro Associates.

e. Name of Project: Willow Falls Dam Hydro Project.

f. Location: On the Willow River in St. Croix County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268-8820.

i. FERC Contact: Ed Lee—(202) 376-5786.

j. Comment Date: October 31, 1988.

k. Description of Application: The license for this project was issued on April 15, 1985, for an installed capacity of 1,200 kW. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Transfer of License.

b Project No.: 1473-004.

c. Date Filed: April 29, 1988.

d. Applicant: Montana Power Company (Licensee) and Granite County, Montana (Transferee).

e. Name of Project: Flint Creek.

f. Location: At Georgetown Lake within the Deerlodge National Forest near Anaconda in Deer Lodge and Granite Counties, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Larry Thompson, 40 East Broadway Street, Butte, MT 59701, (406) 723-5421.

i. FERC Contact: Julie Bernt, (202) 376-1936.

j. Comment Date: November 3, 1988.

k. Description of Project: The original Flint Creek development was started in 1890 and full-time operation was begun by the Montana Water, Electric Power and Mining Company in 1901. On January 25, 1940, Montana Power Company received a license to operate the project. Montana Power Company proposes to transfer the license to Granite County, Montana, and is not interested in obtaining a new license for the site.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing applications and competing application filings which are not

applicable to transfer of license applications).

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", "Motion To Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23147 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-421-001 et al.]

Gas Gathering Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corporation

[Docket Nos. CP88-421-001, RP88-255-000 and TM89-1-13-000]

September 30, 1988.

Take notice that on September 20, 1988, Gas Gathering Corporation ("GGC") tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective October 20, 1988:

First Revised Volume No. 1

Second Revised Sheet No. 1

Second Revised Sheet No. 4

First Revised Sheet No. 35-B

Original Sheet No. 35-C and 81

First Revised Sheet No. 80

First Revised Volume No. 2

First Revised Sheet No. 2

Second Revised Sheet No. 1

GGC states that the changes filed herein effected two primary purposes: (1) Changes to the General Terms and Conditions of Revised Volume No. 1 of its tariff providing terms whereby GGC will bill its customers in order to recover from the annual charges assessed by the Commission under § 382.202 of the Regulations pursuant to the provisions of the Commission's Order 472; and (2) the cancellation of Rate Schedule X-1 to First Revised Volume No. 2 of GGC's FERC as the result of the Commission's "Order Authorizing Abandonment" issued November 28, 1986, in *Gas Gathering Corporation*, Docket No. CP86-340-000.

Comment date: October 11, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-817-000]

September 30, 1988.

Take notice that on September 15, 1988, Transcontinental Gas Pipe Line Corporation (Transco) P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-817-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Superior Natural Gas Corporation (Superior) under Transco's blanket certificate issued in Docket No. CP88-328-000 on April 29, 1988, 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.

Transco states that pursuant to a transportation agreement dated June 6, 1988, it proposes to transport natural gas for Superior, on an interruptible basis, pursuant to Rate Schedule IT. Transco states it would receive the gas at Wharton County, Texas, and deliver the gas to Natural Gas Pipeline Company of America (Natural) at Wharton County, Texas.

Transco further states that the volume of gas transported for Superior would on a peak day be 25,000 dt, on an average day be 25,000 dt, and on an annual basis be 1,000,000 dt. Transco indicates that

service under Section 284.223(a) commenced July 28, 1988, as filed in Docket No. ST88-5285.

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Diamond Shamrock Natural Gas Marketing Company

[Docket No. CI88-644-000]

October 3, 1988.

Take notice that on September 26, 1988, Diamond Shamrock Natural Gas Marketing Company (Diamond Shamrock) of P.O. Box 696000, San Antonio, Texas 78269-6000, 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 to public inspection.

Comment date: October 20, 1988, in accordance with Standard Paragraph J at the end of the notice.

4. United Gas Pipe Line Company

[Docket No. CP88-839-000]

October 3, 1988.

Take notice that on September 26, 1988, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas, 77251-1478 filed in Docket No. CP88-839-000 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 on behalf of Enron Gas Marketing, Inc. (Enron), under its blanket authorization issued in Docket No. CP88-6-000 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.

United would perform the proposed interruptible transportation service for Enron, a marketer of natural gas, pursuant to a gas transportation service agreement under Rate Schedule ITS dated August 15, 1988. The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 8,240 MMBtu; on an average day up to 8,240 MMBtu; and on an annual basis 3,007,600 MMBtu for Enron. United proposes to receive the subject gas from various existing points of receipt on its system in offshore Louisiana and onshore Louisiana.

United would then transport and redeliver such volumes to Enron at existing points of interconnection in Alabama and Louisiana for use by industrial end users. The proposed rate to be charged is 28.40 cents per Mcf. Such rate is the commodity rate type II from the interruptible transportation rate schedule effective January 1, 1988, for mileage-based transportation in United's FERC Gas Tariff, First Revised Volume No. 1. The commodity rate type II includes a component for gas consumed in the operation of United's pipeline system and includes the Gas Research Institute surcharge. United avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on September 1, 1988, as reported in Docket No. ST88-5689-000.

Comment date: November 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP88-851-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-851-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Mobil Natural Gas, Inc. (Mobil) all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Mobil, a producer, on an interruptible basis pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5426. Williams further explains that the peak day quantity would be 57,000 MMBtu, the average daily quantity would be 10,000 MMBtu, and that the annual quantity would be 20,805,000 MMBtu. Williams explains that it would receive natural gas for Mobil's account at points located in Grant County, Kansas and in Texas

County, Oklahoma and would redeliver the gas for Mobil's account at the Helix/Jayhawk Plant in Kansas.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP88-857-000]

October 4, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-857-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Delta Gas Resources, Inc. (Delta), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Delta on an interruptible basis pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5425. Williams further explains that the peak day quantity would be 6,000 MMBtu and that the annual quantity would be 2,190,000 MMBtu. Williams explains that it would receive natural gas for Delta's account at three points located in Oklahoma and would redeliver the gas for Delta's account to Kansas Power and Light Company at a point in Kansas.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP88-855-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-855-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act of Vesta Energy Company (Vesta), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Vesta on an interruptible basis pursuant to a transportation agreement dated July 29, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5431. Williams further explains that the peak day quantity would be 15,275 MMBtu, the average daily quantity would be 13,500 MMBtu, and that the annual quantity would be 5,575,375 MMBtu. Williams explains that it would receive natural gas for Vesta's account at 45 points located in Kansas, Missouri, and Oklahoma and would redeliver the gas for Vesta's account at 12 points in Kansas and five points in Missouri.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP88-854-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-854-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Heartland Gas Marketing, Inc. (Heartland), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Heartland, a marketer, on an interruptible basis pursuant to a transportation agreement dated July 29, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5430. Williams further explains that the peak day quantity would be 10,000 MMBtu, the average daily quantity would be 10,000 MMBtu, and that the annual quantity would be 3,650,000 MMBtu. Williams explains that it would receive natural gas for Heartland's account at 6 points in Oklahoma, 3 points in Kansas, 3 points in Wyoming, and one point each in Texas and Colorado and would redeliver the gas for Heartland's account at one point in Kansas and two points in Missouri.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP88-853-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-853-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Williams Gas Marketing Company (Williams Marketing), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Williams Marketing, a marketer, on an interruptible basis pursuant to a transportation agreement dated July 29, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5444. Williams further explains that the peak day quantity would be 30,250 MMBtu, the average daily quantity would be 30,250 MMBtu, and that the annual quantity would be 11,041,250 MMBtu. Williams explains that it would receive natural gas for Williams Marketing's account at 291 points located in Colorado, Kansas, Missouri, Oklahoma, Texas, and Wyoming and would redeliver the gas for Williams Marketing's account at 39 points in Kansas, Missouri, Nebraska, and Oklahoma.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP88-852-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-852-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Mountain Iron and Supply Company (Mountain Iron), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Mountain Iron, on an interruptible basis pursuant to a transportation agreement dated August

1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5432. Williams further explains that the peak day quantity would be 6,500 MMBtu, the average daily quantity would be 6,500 MMBtu, and that the annual quantity would be 2,363,500 MMBtu. Williams explains that it would receive natural gas for Mountain Iron's account at six points in Kansas, three points in Oklahoma, and one point in Wyoming, and would redeliver the gas for Mountain Iron's account at nine points in Kansas, one point in Missouri, and two points in Texas.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Williams Natural Gas Company

[Docket No. CP88-850-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-850-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for American Central Gas Marketing Company (American Central), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for American Central, a marketer, on an interruptible basis pursuant to a transportation agreement dated July 26, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5427. Williams further explains that the peak day quantity would be 24,000 MMBtu, the average daily quantity would be 24,000 MMBtu, and that the annual quantity would be 8,760,000 MMBtu. Williams explains that it would receive natural gas for American Central's account at 418 points in Colorado, Kansas, Oklahoma, Texas, and Wyoming, and would redeliver the gas for American Central's account at seven points in Kansas and two points in Texas.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP88-849-000]

October 4, 1988.

Take notice that on September 26, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-848-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Associated Natural Gas Company (Associated), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Associated, a marketer, on an interruptible basis pursuant to a transportation agreement dated July 29, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5429. Williams further explains that the peak day quantity would be 50,000 MMBtu, the average daily quantity would be 50,000 MMBtu, and that the annual quantity would be 18,250,000 MMBtu. Williams explains that it would receive natural gas for Associated's account at 469 points in Colorado, Kansas, Missouri, Oklahoma, and Wyoming and would redeliver the gas for Associated's account at 15 points in Kansas, 5 points in Missouri and 1 point in Oklahoma.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Williams Natural Gas Company

[Docket No. CP88-848-000]

October 4, 1988.

Take notice that on September 26, 1988, William Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-848-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for OXY USA, Inc. (OXY), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for OXY, a producer, on an interruptible basis pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under

§ 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5445. Williams further explains that the peak day quantity would be 10,775 MMBtu, the average daily quantity would be 10,775 MMBtu, and that the annual quantity would be 3,932,875 MMBtu. Williams explains that it would receive natural gas for OXY's account at points located in Grant County, Kansas and in Carson County, Texas and would redeliver the gas for OXY's account at 3 points in Kansas and 1 point in Carson County, Texas.

Comment date: November 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

14. Williams Natural Gas Company

[Docket No. CP88-860-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-860-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Atlas Powder Company (Atlas), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Atlas, an end-user, on an interruptible basis, pursuant to a transportation agreement dated July 27, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5525. Williams further explains that the peak day quantity would be 2,000 MMBtu, the average daily quantity would be 1,200 MMBtu, and that the annual quantity would be 730,000 MMBtu. Williams explains that it would receive natural gas for Atlas' account at 11 points located in Kansas and Oklahoma and would redeliver the gas to Atlas at the Joplin Chemical Plant in Missouri.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP88-861-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-861-000 a request pursuant to

§§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Farmland Industries, Inc. (Farmland), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Farmland, an end-user, on an interruptible basis, pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5521. Williams further explains that the peak day quantity would be 30,000 MMBtu, the average daily quantity would be 30,000 MMBtu, and that the annual quantity would be 10,950,000 MMBtu. Williams explains that it would receive natural gas for Farmland's account at 454 points located in Colorado, Kansas, Oklahoma, Texas, and Wyoming and would redeliver the gas for Farmland's account at three points in Kansas.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

16. Williams Natural Gas Company

[Docket No. CP88-862-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-862-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Mobil Natural Gas, Inc. (Mobil), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Mobil, on an interruptible basis, pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5424. Williams further explains that the peak day quantity would be 210,000 MMBtu, the average daily quantity would be 150,000 MMBtu, and that the annual quantity would be 76,650,000 MMBtu. Williams explains that it would receive natural gas for

Mobil's account at 33 points located in Kansas and Oklahoma and would redeliver the gas for Mobil's account at 38 points in Kansas, Missouri, Oklahoma, and Texas.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

17. Williams Natural Gas Company

[Docket No. CP88-863-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-863-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Gastrak Corporation (Gastrak), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Gastrak, on an interruptible basis, pursuant to a transportation agreement dated July 29, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5523. Williams further explains that the peak day quantity would be 37,000 MMBtu, the average daily quantity would be 37,000 MMBtu, and that the annual quantity would be 13,505,000 MMBtu. Williams explains that it would receive natural gas for Gastrak's account at 198 points located in Colorado, Kansas, Oklahoma, Texas, and Wyoming and would redeliver the gas for Gastrak's account at 34 points in Kansas, Missouri, and Oklahoma.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

18. Williams Natural Gas Company

[Docket No. CP88-864-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-864-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Kansas City Power and Light Company (KCPL), all as more

fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for KCPL, on an interruptible basis, pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5423. Williams further explains that the peak day quantity would be 10,000 MMBtu, the average daily quantity would be 5,500 MMBtu, and that the annual quantity would be 3,650,000 MMBtu. Williams explains that it would receive natural gas for KCPL's account at 100 points located in Colorado, Missouri, Oklahoma, and Wyoming and would redeliver to KCPL at a point at Kansas City, Missouri.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

19. Williams Natural Gas Company

[Docket No. CP88-865-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-865-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for Farmland Industries, Inc. (Farmland), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Farmland, an end-user, on an interruptible basis, pursuant to a transportation agreement dated August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5595. Williams further explains that the peak day quantity would be 200,000 MMBtu, the average daily quantity would be 73,000,000 MMBtu. Williams explains that it would receive natural gas for Farmland's account at 455 points located in Colorado, Kansas, Missouri, Oklahoma, Texas, and Wyoming and would redeliver the gas for Farmland's account at eight points in Kansas, Missouri, and Oklahoma.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

20. Williams Natural Gas Company

[Docket No. CP88-859-000]

October 5, 1988.

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-859-000 a request pursuant to § 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for National By-Products, Inc. (By-Products), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for By-Products, an end-user, on an interruptible basis, pursuant to a transportation agreement dated August 1, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5557. Williams further explains that the peak day quantity would be 200,000 MMBtu, the average daily quantity would be 250 MMBtu and that the annual quantity would be 91,250 MMBtu. Williams explains that it would receive natural gas for By-Products' account at a point located in Osage County, Oklahoma, and would redeliver the gas for By-Products' account to KPL Gas Service in Wichita, Kansas.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211-214). 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 the applicant to appear or be represented at the hearing.

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,
Secretary.

[FR Doc. 88-23243 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-22-004]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on September 26, 1988, filed the following revised tariff sheets both to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Second Revised Sheet No. 31
Substitute Third Revised Sheet No. 31

CNG states the proposed effective date for the Substitute Second Revised Sheet No. 31 is September 1, 1988. Substitute Third Revised Sheet No. 31 is proposed to become effective on October 1, 1988. As fully explained in the filing, CNG's filing reduces the D-2 component of the unrecovered gas cost surcharge to eliminate take-or-pay payments made to Tennessee Gas Pipeline Company ("Tennessee") in accordance with a Tennessee settlement in Docket No. RP85-178-000. The effect of the rate change is to reduce the D-2 rate by 1.03 cents.

CNG states Substitute Third Revised Sheet No. 31 reflects the revised surcharge rate coupled with the new ACA unit charge proposed for the year beginning October 1, 1988.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 motions or protests should be filed on or before October 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,

Secretary.

[FR Doc. 88-23249 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-88-261-000]

Black Marline Pipeline Co.; Change in Ferc Gas Tariff

September 30, 1988.

Take notice that on September 28, 1988, Black Marlin Pipeline Company ("Black Marlin") P.O. Box 1188, Houston, Texas 77251-1188, tendered for filing the following revised tariff sheets to be included in its FERC Gas Tariff, Original Volume No. 1:

1st Revised Sheet No. 100
2nd Revised Sheet No. 105
1st Revised Sheet No. 110
1st Revised Sheet No. 114
1st Revised Sheet No. 204
1st Revised Sheet No. 205
1st Revised Sheet No. 206
1st Revised Sheet No. 208
1st Revised Sheet No. 209
1st Revised Sheet No. 210
1st Revised Sheet No. 213
1st Revised Sheet No. 216

Black Marline states that in order to permit discretion in the application of tariff provisions, 1st Revised Sheet Nos. 100, 110 and 114, and 2nd Revised Sheet No. 105, are being filed to provide that Black Marlin shall have the right to waive any provision of its effective transportation rate schedules (Rate Schedules T-1, T-2, T-3 and T-4) in a not unduly discriminatory manner. Black Marlin further states that the remaining revised tariff sheets are being filed as technical revisions in the General Terms and Conditions to provide minor changes and/or clarifications to tariff provisions relating to measurements, measuring equipment, qualify specifications and billing and payment, and to provide certain minor corrections.

Black Marlin requests a waiver of the Commission's Regulations to permit an effective date of September 28, 1988 or, in the alternative, if the Commission does not permit an effective date of September 28, 1988, Black Marlin requests a waiver of the Commission's Regulations to permit an effective date of October 19, 1988.

Black Marline states that copies of the filing were mailed to each of its 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 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 October 7, 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,
Secretary.

[FR Doc. 88-23148 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C188-605-000]

People of the State of California et al.; Complaint

October 4, 1988.

On September 12, 1988, the People of the State of California and the California Public Utilities Commission (CPUC), Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), and Southwest Gas Corporation (Southwest) (complainants) filed a complaint pursuant to Rule 206 of the Commission's rules of practice and procedure alleging that El Paso Natural Gas Company (El Paso) and Odessa Natural Gasoline Company (Odessa) unlawfully diverted natural gas from the Waddell Ranch acreage in Crane County, Texas, from the interstate to the intrastate market for a period of years beginning in 1963 in violation of section 7(b) of the Natural Gas Act, for the profit of El Paso and Odessa, and to the detriment of El Paso's customers. Complainants request that the complaint be consolidated with the proceedings in *TennGasco Gas Supply Co. et al. v. Southland Royalty Co. et al.*, Docket No. C185-513-000 (*TennGasco*).¹

The complainants assert that during the course of discovery and the filing of testimony in *TennGasco*, complainants learned that El Paso was a knowing and willing participant in an alleged diversion of gas, and that El Paso's own affiliate, Odessa, was the recipient of the diverted supplies. The complainants allege that the prepared testimony of several witnesses demonstrate El Paso and Odessa's involvement in the diversions.

Under Rules 206(b) and 213(a), El Paso and Odessa must file answers to the

complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. El Paso and Odessa shall file their answers with the Commission not later than 30 days after publication of this notice in the *Federal Register*.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 30 days after publication of this notice in the *Federal Register*. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23245 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-37-001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

October 4, 1988.

Take notice that on September 29, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing Substitute Forty-Third Revised Sheet No. 10, to be a part of its FERC Gas Tariff, First Revised Volume No. 1.

Northwest states this tariff sheet supplements the purchased gas cost adjustment ("PGA") that was filed on August 31, 1988 in the above-captioned docket. Northwest states that there was no revision to the Currently Effective Rates as filed on August 31, but merely a shift between the Base Tariff Rate and Current Adjustment columns of the aforementioned tariff sheet. Such change is necessary as a result of a restatement of the base tariff rate pursuant to Commission order in Docket No. TQ88-2-37.

Northwest respectfully requests waiver of the Commission's regulations to permit an effective date of October 1, 1988 for the tendered tariff sheet.

A copy of the filing has been mailed to Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 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 October 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,
Secretary.

[FR Doc. 88-23248 Filed 10-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-28-000]

Rocky Mountain Natural Gas Co. v. Jack J. Grynberg Individually, and as General Partner for the Greater Green River Basin Drilling Program; Complaint

October 4, 1988.

On September 8, 1988, Rocky Mountain Natural Gas Company (Rocky Mountain) filed a complaint under Rule 206 of the Commission's rules of practice and procedure¹ against Jack J. Grynberg (Grynberg), individually, and as a general partner for the Greater Green River Basin Drilling Program, for charging rates and attempting to collect rates in excess of the applicable maximum lawful price for the sale of natural gas to Rocky Mountain from a well which qualifies under section 104 of the Natural Gas Policy Act of 1978 (NGPA)². Rocky Mountain asserts that these actions by Grynberg violate section 504(a)(1) of the NGPA and a Commission order which explicitly states that the gas from the well in question is subject to the maximum lawful price under section 104.

Rocky Mountain states that Grynberg has claimed in a pending state court action³ that gas from a well which was "committed and dedicated to interstate commerce" on the day before the enactment of the NGPA, is subject to section 105 of the NGPA by virtue of an intrastate contract covering the same well, and that under a 1984 Settlement

¹ 18 CFR 385.206 (1988).

² 15 U.S.C. 3014 (1982).

³ Grynberg v. Rocky Mountain Natural Gas Company, et al., Case No. 87-CV-165, District Court, Moffat County, Colorado (filed June 30, 1987).

¹ On December 2, 1987, a partial settlement in *TennGasco* was approved by the Commission. 41 FERC ¶ 61,254 (1987), *reh'g denied*, 43 FERC ¶ 61,058 (1988). On July 15, 1988, a second partial settlement was filed, which is now pending before the Commission.

Agreement and section 105, Grynberg is entitled to the section 102 maximum lawful price. In addition, Rocky Mountain alleges that Grynberg is seeking to collect take-or-pay payments with respect to the well in question at the section 102 price for the period of time during which gas from that well was dedicated to interstate commerce. Rocky Mountain, therefore, requests that the Commission order Grynberg to cease and desist from (a) charging or attempting to charge, directly or indirectly, prices in excess of the ceiling prices of section 104 of the NGPA for gas from the subject well; (b) attempting to collect any take-or-pay payments attributable to the well in question applicable to the period prior to September 25, 1987, when the Commission issued an order granting an abandonment from a prior sale in interstate commerce with respect to that well; and (c) attempting to collect take-or-pay payments applicable to the well in question based on a price in excess of the section 104 price for the period after September 25, 1987.

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 Rule 211 or 214 of the Commission's rules of practice and procedure. All such petitions should be filed within 30 days following publication of this notice in the *Federal Register*. 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. Respondent's answer to the complaint is also due on or before 30 days following *Federal Register* publication.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23246 Filed 10-6-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-1-79-000]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 30, 1988.

Take notice that Sabine Pipe Line Company (Sabine) on September 26, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1988.

Sabine states that on June 30, 1988, the Commission issued a revision to the unit rate of the Annual Charge Adjustment (ACA) clause to be applied to rates for recovery of 1988 annual charges pursuant to FERC Order No. 472 in Docket No. RM87-3-000. The purpose of this filing is to implement the ACA charge necessary for Sabine to recover from its customers annual charges accessed to Sabine by the Commission pursuant to § 382.103 of the Commission's regulations. The ACA unit charge authorized by the Commission is \$.0018 per MCF, which converts to \$.0017 per MMBtu under Sabine's basis for billing.

Sabine requests a waiver of the thirty day notice requirements, pursuant to § 154.51 of the Commission's regulations, to implement its ACA unit rate to be effective October 1, 1988. Sabine states that (i) it has paid its applicable 1988 annual charge, (ii) it intends to recover annual charges only through its ACA unit charge, and (iii) an effective date of October 1, 1988 will result in lower transportation charges to all of its shippers.

Copies of the filing were served upon Sabine's customers, the Louisiana Department of Natural Resources and the Railroad Commission of Texas.

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 § 315.214 and § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 7, 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,
Secretary.

[FR Doc. 88-23149 Filed 10-6-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. C188-648-000]

Western Gas Marketing USA Ltd.; Application for a Blanket Certificate With Pregranted Abandonment

October 4, 1988.

Take notice that on September 28, 1988, Western Gas Marketing USA Ltd. (Western Gas) of 2001 Bryan Tower,

Suite 953, Dallas, Texas 75201, 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 to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 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 Western Gas to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23247 Filed 10-6-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of August 29 Through September 2, 1988

During the week of August 29 through September 2, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Frensley Towerman & Willis, 9/1/88, KFA-0210

The Department of Energy (DOE) issued a Decision and Order concerning the Freedom of Information Act (FOIA) request made by Frensley, Towerman & Willis (Appellant). The Decision denied the request with regard to ten documents and a portion of another which the DOE held were exempt from disclosure under Exemption 5 of the

FOIA. The DOE remanded the remaining three documents and a portion of another to the Albuquerque Operations Office as the DOE stated that they appeared to contain segregable factual material not covered by Exemption 5. The Albuquerque Operations Office was ordered to review these documents and to release to the Appellant any factually segregable material.

International Union of Operating Engineers Local 101, 9/1/88, KFA-0209

The International Union of Operating Engineers Local 101 filed an Appeal from a denial of information by the Deputy Director of the Office of Governmental and External Affairs of the DOE's Albuquerque Operations Office. The Appellant had filed a FOIA request with Albuquerque seeking access to the weekly certified payroll records submitted by a DOE subcontractor for work performed at the Bendix Plant in Kansas City, Missouri. In her determination, the Deputy Director released copies of the requested payroll records, but withheld the names and other identifying information of the employees involved. The Deputy Director determined that the privacy interests of the employees far outweighed any possible public interest to be served by release of the personal data to a third party. In considering this Appeal, the DOE determined that the release of the withheld information would constitute an invasion of the employees' privacy. The DOE noted that the Appellant failed to indicate why it was seeking the requested records, and it did not state what public interest would be served by releasing the information. In view of the fact that there was no apparent or alleged public interest to balance against the serious invasion of personal privacy involved, the DOE denied the Appeal.

Request for Exception

Froeth Service and Supply, 8/30/88, KEE-0162

Froeth service and Supply filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Froeth's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

Refund Applications

Aminoil U.S.S., Inc./Dick Parks Gas Company, 9/2/88, RF139-166

The DOE issued a Decision and Order concerning an Application for Refund filed by Dick Parks Gas Company in the Aminoil U.S.A., Inc., special refund proceeding. Dick Parks elected to limit its claim to \$5,000. The applicant is presumed to have been injured by Aminoil's alleged overcharges. After examining the firm's application and supporting documentation, the DOE concluded that it should receive a refund totaling \$8,808, representing \$5,000 in principal and \$3,808 in interest.

Black & White Cars, Inc. et al., 9/1/88, RF 272-18793 et al.

The DOE issued a Decision and Order denying Applications for Refund submitted by eight claimants in the crude oil refund proceeding. The DOE determined that each applicant had waived its rights to a Subpart V crude oil refund when it filed for a refund from the Surface Transporter Escrow account created by the Stripper Well Settlement Agreement. Accordingly, each applicant was ineligible to receive a Subpart V crude oil refund.

Exxon Corporation/Elks Oil Company et al., 9/1/88, RF307-70 et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than \$5,000 or an end-user of Exxon products. Each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$14,301 (\$12,741 principal plus \$1,560 interest).

Getty Oil Company Amerada Hess Oil Company, 9/2/88, RF265-2749

Amerada Hess filed an Application for Refund in which the Applicant sought a portion of the fund obtained by the DOE through a consent order entered into with Getty Oil. The applicant submitted information indicating the volume of Getty propane purchased during the consent order period. Under the procedures outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1968), the applicant elected to utilize the presumptive level of injury, sixty percent for retailers or resellers of propane. The total amount of the refund approved in the Decision and Order is \$16,973, representing \$8,288 in principal and \$8,685 in accrued interest.

Getty Oil Company/Belasco Petroleum Company, 9/2/88 RF265-0490 and RF265-0491

The DOE issued a Decision and Order concerning two Applications for Refund

by a reseller motor gasoline and middle distillates that were covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating Getty purchases of 67,016,723 gallons of motor gasoline and 1,013,792 gallons of middle distillates. It elected to limit its claims on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the maximum of \$50,000 threshold. The sum of the refund approved in this Decision is \$85,356, representing \$41,681 in principal and \$43,675 in accrued interest.

Getty Oil Company/Home Petroleum Corporation, 9/1/88, RF265-2098

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of natural gasoline that was covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating purchases of 21,872,335 gallons of Getty natural gasoline. It elected to limit its claim on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the maximum of \$50,000 threshold. The sum of the refund approved in this Decision is \$41,010, representing \$20,026 in principal and \$20,984 in accrued interest.

Getty Oil Company/Vanguard Petroleum Corporation, 9/2/88, RF265-2060

The DOE issued a Decision and Order concerning an Application for Refund filed by Vanguard Petroleum Corporation (Vanguard), a reseller of propane and butane covered by a Consent Order that the DOE entered into with Getty Oil Company. Vanguard submitted documentation substantiating that during the consent order period it maintained banks of unrecovered costs and purchase cost data that were compared with publicly available industry pricing data. Under the competitive disadvantage methodology, we determined that Vanguard suffered significant injury and that a refund of the full volumetric amount for propane and butane is appropriate. The total refund approved in this Decision is \$45,675, representing \$22,304 in principal and \$23,371 in accrued interest.

Mobil Oil Corp./J.W. Fields Oil Co. et al., 8/30/88, RF225-8866 et al.

The DOE issued a Decision and Order concerning six refund applications filed in the Mobil Oil Corp. special refund proceeding. OHA determined that each of the retailer/reseller applicants was eligible to receive a refund based on the

volume of its purchases of Mobil petroleum products during the consent order period. According to the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), the applicants were granted refunds that together totaled \$12,765 (\$10,222 in principal plus \$2,543 in interest).

Mobil Oil Corp./Viles Oil Company, 9/2/88, RF225-2155 et al.

The DOE issued a Decision and Order concerning the refund application filed in the Mobil Oil Corp. special refund proceeding by Viles Oil Company, a reseller of Mobil petroleum products during the consent order period. The DOE determined that Viles was eligible to receive a refund based on the volume of its purchases of Mobil motor gasoline, middle distillates and lubricants. According to the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Viles was granted a refund totaling

\$2,702 (\$2,164 in principal plus \$538 in interest).

San Gabriel Valley Water Co., 9/1/88, RF272-74803

On August 12, 1988, the DOE issued a Decision and Order granting a refund of \$9 to San Gabriel Valley Water Co. (San Gabriel), Case No. RF272-33599. *Wagner Bros., et al.*, 17 DOE ¶ —, Case Nos. RF272-33400, et al. (August 12, 1988). This Decision & Order granted San Gabriel a refund which was based on an erroneous volume. To remedy the situation, the DOE issued a Supplemental Order granting San Gabriel an additional refund of \$82.

Terry & Ann McMillan et al., 9/2/88, RF272-4162 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 32 applicants based on their respective purchases of refined

petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, mining, and construction, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this decision is \$17,272. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Anthony Ehrmantrout, et al.	RF272-37600	8/30/88	158	\$3,686
Donald Terry, et al.	RF272-8630	9/1/88	151	9,427
G.T. Hamilton, Jr. et al.	RF272-13423	8/30/88	29	12,893
New Products Corp. et al.	RF272-9617	9/2/88	149	8,122
Orville W. Gutknecht et al.	RF272-36600	9/1/88	183	3,903

Dismissals

Name	Case No.
American Auto Service, Inc.	RF300-108
Bemben's Gulf Station	RF300-93
Bethlehem Steel Corp.	RF265-1887
Bruce Hawley Trucking, Inc.	RF272-68138
Charter International Oil Co.	RF300-4293
City of Waltham	RF300-4634
City of Portland	RF272-20256
Commercial Carriers, Inc.	RF272-66026
Di Salvo Trucking Co.	RF272-70271
East Ocean Gulf	RF300-6943
Eugene Gilleland	RF300-165
Faldet Farms, Inc.	RF272-11429
Franco Distributors, Inc.	RF300-4408
Frank I. Vlasak	RF272-12989
Gerard Chartier	RF272-10437
Gordon Oil Co.	RF300-5377
Griffin Oil	RF300-5110
H&D Gulf	RF300-3201
Hamilton Trucking, Inc.	RF272-70302
Jack and Doug Little Distributors, Inc.	RF300-760
Jerry's Baymeadows Gulf	RF300-4341
John Douthat	RF300-3716
King Oaks Terrace	RF272-54529
Knox Ford Sales	RF300-1624
Larrison Coal & Fuel Oil, Inc.	RF300-4983
Leroy's Gulf Service II	RF300-245
Lou's Gulf	RF300-6229
M.G.S. Gulf Service	RF300-6109
Macon County Board of Education	RF300-7065
Martin & Brown Fuel, Inc.	RF300-4275
Mira Oil Co.	RF300-2676
	RF300-604

Name	Case No.
Murphy's Gulf	RF300-3512
N.C. State Hospital	RF300-4383
O'Connell Oil	RF300-2269
Perry's North Main Gulf	RF300-5676
Pete's Gulf	RF300-5003
Pilot Mountain American	RF300-7712
Pitres Gulf	RF300-7723
Quick As a Wink Car Wash	RF300-4198
Red's Freeway Gulf	RF300-3869
Richard V. Sheehan	RF300-5105
Santee Gulf Station	RF300-1041
Shurden Gulf Service	RF300-3905
The Hecht Company	RF300-1272
Travelers Service Station	RF300-2506
Trenton Gulf Service Stat.	RF300-7722
Trevis Berry	RF300-359
Vickery Oil Co.	RF272-70288
W.E. Nichols, III	RF300-6941
Wake County Board of Education	RF272-65706
	RF300-4273

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 pm and 5:00 pm, except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a

commercially published loose leaf reporter

September 29, 1988.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

[FR Doc 88-23250 Filed 10-6-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3460-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared September 19, Through 23, 1988

Availability of EPA comments prepared September 19, 1988 through September 23, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact

statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

EPA No. DS-COE-C35008-00, Rating LO, Port of New York-New Jersey Dredged Material Disposal Project, Use of Subaqueous Barrow Pits for Disposal of Dredged Material, Designation, NY and NJ.

Summary: EPA lacks objections to the selection of subaqueous borrow pits for the disposal of dredged materials from the Port of New York and New Jersey. However, EPA requests that this program be implemented as a demonstration project and that land-based alternatives continue to be investigated as a future alternative to the ocean disposal of dredged materials.

FINAL EISs

ERP No. F-AFS-K65117-CA, South Fork Fire Recovery and Salvage Project, August thru October 1987, South Fork Roadless Area Land and Resource Management Plan, Implementation, Shasta-Trinity National Forest, Trinity County, CA.

Summary: EPA expressed environmental concerns with the Forest Service's proposed alternative, due to impacts to water quality from erosion and sedimentation, and impacts to anadromous fisheries. EPA requested that the Forest Service reconsider the adoption of an alternative which is more protective of water quality and fisheries restoration.

ERP No. F-FHW-D40221-MD, Beaver Dam Road Widening and Extension, Beaver Court to Padonia Road, Funding and 404 Permit, Baltimore County, MD.

Summary: EPA's points raised in response to the draft EIS were addressed in this document, but there are concerns regarding potential impacts to water quality and wetlands resulting from the widening and extension of Beaver Dam Road.

ERP No. F-NPS-L61172-AK, Lake Clark National Park and Preserve Wilderness Recommendations, Designation or Nondesignation, AK.

Summary: Review of the final EIS as been completed and the project found to be satisfactory. No formal comments were sent to the agency.

Dated: October 4, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.
[FR Doc. 88-23255 Filed 10-6-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3460-3]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed September 26, Through 30, 1988.

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

EIS No. 880324, Final, FRC, OH, WV,

PA, Upper Ohio River Basin Hydroelectric Development, Construction, Operation and Maintenance, Licenses, Belmont, Gallia, Jefferson, Mohoning and Washington Cos., OH; Hancock Co., WV and Butler, Beaver, Allegheny, and Westmoreland Cos., PA, Due: November 7, 1988, Contact: George H. Taylor (202) 376-1900

EIS No. 880325, Final, BLM, WY, Great

Divide Resource Area (formerly Medicine Bow and Divide Resource Areas) Land and Mineral Management Plan, Implementation, Albany, Laramie, Sweetwater and Carbon Counties, WY, Due: November 7, 1988, Contact: Bud Holbrook (307) 324-4841

EIS No. 880326, Final, NPS, AK, Cape

Krusenstern National Monument, Wilderness Recommendations, Designation or Nondesignation, AK, Due: November 7, 1988, Contact: Linda Nebel (907) 257-2654

EIS No. 880327, Final, FHW, FL, FL-5/

US 1 Upgrading, FL-922/NE-123rd Street to NE 203rd Street, Funding, Section 404 and Coast Guard Bridge Permits, Dade County, FL, Due: November 7, 1988, Contact: J. R. Skinner (904) 681-7223

EIS No. 880328, DSUpl, AFS, OR,

Ochoco National Forest and Crooked River National Grassland, Land and Resource Management Plan, Additional Alternative and Management Requirements Analysis, Crook, Grant, Jefferson, Harney and Wheeler Counties, OR, Due: January 17, 1989, Contact: Terry Solberg (503) 447-6247

EIS No. 880329, Final, NPS, AK, Glacier

Bay National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: November 7, 1988, Contact: Linda Nebel (907) 257-2654

EIS No. 880330, Draft, AFS, AK, 1989-94

Ketchikan Pulp Long Term Timber Sale Management Plan, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: November 21, 1988, Contact: J. Michael Lunn (907) 225-3101

EIS No. 880331, Final, BLM, AK, Central

Arctic Management Area WSAs' Wilderness Recommendations,

Designation of Nondesignation, Brook Range, North Slope Borough, AK, Due: November 7, 1988, Contact: M.

Thomas Dean (907) 474-2300

EIS No. 880332, Final, BPA, OR, WA, ID,

MT, New Energy-Efficient Homes Programs, Accessing Indoor Air Quality Options, Implementation and Construction, OR, WA, ID and MT, Due: November 7, 1988, Contact:

Anthony R. Morrell (503) 230-5136

EIS No. 880333, FSUpl, FRC, AZ, WY,

CA, NV, UT, TX, NM, CO, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ, WY, CA, NV, UT, TX, NM and CO, Due: November 7, 1988, Contact: Mary Griggs (916) 322-0354

Amended Notices

EIS No. 880272, Draft, COE, FL, Miami

Harbor Channel Navigation Improvements, Implementation, Dade County, FL, Due: October 31, 1988, Contact: Rea N. Boothby (904) 791-3453

Published FR 8-29-88—Review period extended.

Dated: October 4, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-23254 Filed 10-6-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3459-8]

Availability of Report to the President and Congress on Need for Leaded Gasoline on the Farm and Announcement of Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a report to the President and the Congress and announcement of a workshop.

SUMMARY: This notice announces the availability of a Report to the President and the Congress which presents the Administrator's findings and recommendations on the need for lead additives in gasoline to be used on a farm for farming purposes.

The Administrator believes there is a need for leaded gasoline or a non-lead additive to be used on the farm to protect many engines designed for leaded gasoline from valve-seat recession. EPA is continuing to investigate the engine damage issue and the impact on public health from the continued use of leaded gasoline.

In addition, EPA will hold a workshop to discuss issues concerning valve protection for agricultural engines and the appropriateness of EPA's definition of leaded gasoline. EPA will also be working with the U.S. Department of Agriculture (USDA) to publicize what can be done to reduce the risk of valve-seat recession in vulnerable engines if leaded gasoline becomes unavailable.

ADDRESSES: The workshop will be held in Chicago, IL at the O'Hare Marriott Hotel, 8535 W. Higgins Road from 9:30 a.m.-5:00 p.m. on November 7, 1988. The report is available from Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John A. Garbak, Environmental Engineer, Field Operations and Support Division, EN-397F, EPA, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-2635.

SUPPLEMENTARY INFORMATION:

I. Background

EPA's phasedown of (and previously proposed ban on) lead in gasoline has caused concern among owners of vehicles and equipment designed to use leaded gasoline, that their engines might suffer valve recession if EPA bans lead in gasoline. Because this concern is most applicable for gasoline engines under heavy load, such as in agricultural service, a provision was placed in the 1985 Food Security Act (Act) requiring EPA, in conjunction with the U.S. Department of Agriculture (USDA), to conduct a study on the possible valve recession effects of unleaded and low-lead gasolines, as well as non-lead valve lubricating additives. Under the Act, EPA and USDA had to jointly publish the study. EPA then was required to hold a public hearing and accept comments on the study.

EPA hearings on the study, with USDA participation, were held in Rosslyn, Virginia; Des Moines, Iowa; and Indianapolis, Indiana during the first part of June 1987. Thirty-nine persons testified, including staff for Senator Quayle and Representative Tauke, and the Lt. Governor of Indiana, John Mutz. Representatives of the American Farm Bureau Federation, the National Council of Farmer Cooperatives, Women Involved in Farm Economics (WIFE), the Indiana Farm Bureau, Inc., the Indiana Corn Growers Association, and the Indiana Beef Cattle Association were among those from the agricultural sector. The public comment period closed on August 10, 1987.

The Act also required EPA to evaluate the study results and comments in order

to "make findings and recommendations on the need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of the regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes." EPA also was required to submit a report to the President and to the Congress including the study, a summary of comments, and EPA's recommendations.

II. Study Summary

The study tested eight engines, designed to use leaded gasoline, on various fuels with and without lead and with two other additives. The study found leaded gasoline at the 0.10 gram per leaded gallon (gplg) standard was generally satisfactory for engine performance. However, many tractors, combines and trucks would be vulnerable to excessive valve-seat recession if operated on unleaded gasoline.

III. Public Comments

Comments were received from a large number of organizations including farm groups, state governments, equipment manufacturers, refiners, farmer cooperatives, additive manufacturers and fleet operators. In addition, over 600 written comments were received from individuals. The most frequent comment was a request that EPA not ban leaded gasoline. Several commenters requested an increase in the permissible lead level. There also were requests that EPA specify a minimum level of lead in leaded gasoline. One commenter supported maintaining the current 0.10 gplg quarterly average limit. Some concerns were expressed about deposits produced by non-lead additives. Several commenters asked EPA to do more testing, and one wanted EPA to develop a rating system for exhaust valve anti-wear additives. Only one commenter took issue with the test results for one of the non-lead additives, saying that other tests have shown that the additive will prevent valve-seat recession at the manufacturer's recommended concentration, and not just reduce it as the report had stated.

The USDA commented that EPA should (1) not ban lead gasoline; (2) take steps necessary to assure that companies continue to sell leaded gasoline to the farming community; (3) require a range of 0.10-0.15 gram of lead in each gallon of leaded gasoline; and (4) continue testing non-lead additives of work with others to establish an acceptable procedure for additive

manufacturers to demonstrate overall efficacy of their products.

IV. Conclusions

Based on the study and a review of the comments, EPA has concluded that:

(1) There are significant numbers of farm engines—about 1.8 million tractors, 271,000 combines, and 750,000 trucks—that are gasoline-powered. Forty-two percent of tractor usage falls in the "light" usage category and should not pose a problem. The other 58 percent would be vulnerable to excessive valve-seat recession if operated on unleaded gasoline, unless they are low-speed engines or have hardened exhaust valve seats. About one-third of all tractors have hard valve seats and also should not pose a problem. The remaining 67 percent are potentially vulnerable if operated in medium- or heavy-duty applications. All combines receive hard use and are likely to experience excessive valve-seat recession if they have cast-iron valve seats and are operated on unleaded gasoline. A large number of farm trucks could be vulnerable to excessive valve-seat recession if operated on unleaded gasoline.

(2) Leaded gasoline at the 0.10 gplg level is adequate to avoid valve recession in most of these engines.

(3) Exclusive use of unleaded gasoline can lead to valve recession in many engines designed for leaded gasoline when operated at medium to high engine speeds.

(4) Some leaded gasoline could have significantly less lead than 0.10 gplg.

(5) Leaded gasoline demand continues to drop. Many refiners are planning to drop leaded gasoline in selected regions of the country and market a mid-octane unleaded product. Leaded gasoline is expected to be only about ten percent of total gasoline usage in the 1990's. At this level of usage, leaded gasoline will probably become a specialty product and will become difficult to find. However, leaded gasoline will probably be found in areas or marketing outlet where the demand is greatest (e.g., farm areas).

(6) Non-lead additives have significant potential as substitutes for lead, although further product development work is warranted.

V. Recommendations in Report

The following are recommended actions for reducing or eliminating valve-seat recession in farm equipment:

(1) Where diesel-powered equipment is available, it should be used in heavy-duty operations in preference to

gasoline-powered equipment that might be vulnerable to valve-seat recession.

(2) Unleaded gasoline of sufficient octane may be used if an engine has the following:

- Hard steel valve seats; or
- Soft valve seats, but is used exclusively for light-duty, low-speed operations; or
- Soft valve seats, but is a low-RPM engine (less than 1,700 revolutions per minute (RPM)).

(3) In situations where only unleaded gasoline is available, and for engines that will be vulnerable to valve-seat recessions, take the following steps:

- Reduce heavy loads on the engine by shifting down and reducing engine speed (i.e., take longer to do tasks that put a heavy strain on the engine);
- Enrich the carburetor air-to-fuel mixture;
- Keep engines in good repair and follow proper maintenance requirements, particularly with respect to the cooling system, and keep engines free from attachments that can restrict air flow and trap heat;
- Use an alternative valve lubricating additive, where available, during periods of heavy use to reduce the risk or extent of damage;
- Do a valve job sooner than planned. Install hard steel valve seats at the next engine overhaul. If the engine has valve rotators, have them removed or disabled.

VI. Steps to be taken by EPA

At this time, the EPA does not have any final plans to ban leaded gasoline, but will continue to aggressively evaluate both the health effects of lead and the potential for engine damage to agricultural and other equipment from such an action. EPA will continue to monitor the lead content of leaded gasoline and will hold a workshop to discuss issues concerning valve protection for agricultural engines and the appropriateness of EPA's definition of leaded gasoline.

In addition to the workshop, EPA will continue to review data developed by the manufacturers of non-lead alternative valve lubricating additives and will meet with selected specialists and other interested persons to review the test data and identify ways to determine the efficacy of non-lead additives.

EPA will publicize information on engines at risk and issue recommendations on preventing valve-seat wear should leaded gasoline be unavailable. EPA will seek the assistance of the USDA in disseminating

such information. EPA has consistently provided guidance to individual inquiries and will continue to do so.

EPA emphasizes that engines designed for leaded gasoline will operate satisfactorily on unleaded gasoline at light loads, and low speeds, and that many (those with hard steel valve seats) will also operate satisfactorily on unleaded gasoline at any speed or load.

VII. Workshop

As a result of concerns raised in the public hearings that some gasoline may be sold as leaded which has a very small amount of lead compared to the quarterly average standard of 0.10 gp1g, and the need to discuss other issues concerning valve protection for agricultural engines, EPA will hold a public workshop. The workshop setting provides an opportunity for informal dialogue and discussion of the issues. The workshop will give particular attention to the following:

(1) What is the amount and range of lead which will be in leaded gasoline? Will refiners be marketing gasoline much below 0.10 gplg?

(2) Should pump labeling requirements for leaded gasoline include the lead content?

(3) Will refiners continue to market leaded gasoline to agricultural communities?

(4) What is the appropriateness of EPA's definition of leaded gasoline?

EPA welcomes comments on any of these or related issues.

The workshop will be held in Chicago, IL at the O'Hare Marriott Hotel, 8535 W. Higgins Road from 9:30 am–5:00 pm on November 7, 1988.

To aid in planning, parties wishing to participate at the workshop should notify John Garbak at (202) 382-2635.

Dated: September 28, 1988.

Lee M. Thomas,
Administrator.

[FR Doc. 88-23181 Filed 10-6-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42064A; FRL-3459-9]

Approval of the Department of Energy Plan for Certification of Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of Department of Energy plan for certification of pesticide applicators.

SUMMARY: In the Federal Register of July 13, 1988 (53 FR 26498), the Agency announced its intent to approve the U.S.

Department of Energy (DOE) Federal Agency Plan for the certification of its employees to apply restricted use pesticides in performance of their official duties. The comment period for the proposed certification plan ended August 12, 1988; no comments were received. This notice announces the Agency's approval of the DOE Pesticide Applicator Certification Plan.

ADDRESSES: Copies of the approved plan are available for review at the following locations during normal business hours.

1. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: 703-557-3262
2. Environmental Protection Agency, 999 18th Street Suite 500, Denver, CO 80202-2405, Telephone: 303-292-1603
3. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: 206-442-5810
4. Public Information Center, Bonneville Power Administration, 905 Northeast Eleventh Avenue, Portland, OR 97232
5. Selected DOE facilities in the Bonneville Service area. For information telephone the Public Information Center at 503-230-3478.

FOR FURTHER INFORMATION CONTACT:

John MacDonald, Office of Pesticides and Toxic Substances, Field Operations Division (TS-757C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703-557-7410).

SUPPLEMENTARY INFORMATION:

The DOE Certification Plan at present only applies to employees of the Bonneville Power Administration (BPA). BPA operates and maintains a regional electrical system covering five States: Idaho, Montana, Oregon, Washington, and Wyoming. If the DOE should at a later date wish to include employees other than those employed by BPA under the DOE certification plan, the submission and approval of a new certification plan or an amendment to this certification plan would be required.

Federal employees are considered to be commercial applicators. The DOE has proposed certification in only Right-of-Way Pest Control as defined at 40 CFR 171.3(b)(6). Certification is based upon participation in training and the taking and passing of a written examination. The DOE plan requires recertification every 3 years. DOE will require certification of all applicators using or supervising the use of all pesticides with the exception of general use pesticides applied by non-motorized

equipment. DOE anticipates that 150 applicators will be certified under the proposed plan.

The Agency received no comments on the proposed plan and hereby approves it.

Dated: September 28, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-23178 Filed 10-6-88; 8:45 am]

BILLING CODE 8560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 30, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on this submission contact Jduy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0099.

Title: FCC M—Annual Report Form M.

Form Number: FCC Form M.

Action: Revision.

Respondents: Business or other for-profit.

Frequency of Response: Annually.

Estimated Annual Burden: 60

Responses; 6,900 Hours.

Needs and Uses: FCC Form M is required by § 1.785 and 43.21 of the FCC Rules and section 219 of the Communications Act of 1934, as amended. Filing of the Form M is required by subject telephone carriers having annual operating revenues in excess of \$100 million. The data are used by FCC staff members in the regulation of the telephone industry and by the public in analyzing the industry.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-23137 Filed 10-6-88; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 30, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0348.

Title: Section 76.79, Records available for public inspection.

Action: Extension.

Respondents: Business, including small business.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 2,525 Recordkeepers, two hours each.

Needs and Uses: Licensees of cable employment units with more than five full-time employees are required to maintain, for public inspection, a file containing copies of all annual employment reports and related documents. The data are used to assess the effectiveness of their EEO programs.

OMB No.: 3060-0264.

Title: Section 80.413, Station equipment records.

Action: Extension.

Respondents: Individuals, State or local governments, Business, including small business, Federal agencies, and Non-profit institutions.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 1,000 Recordkeepers, two hours each.

Needs and Uses: Marine radio licensees are required to maintain record demonstrate that all on-board repeaters and transmitters are properly operating pursuant to the station authorization. The data are used in enforcement and frequency management programs.

OMB No.: 3060-0197.

Title: Section 87.31, Changes during license term.

Action: Extension.

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 100 Respondents, one hour each.

Needs and Uses: Aviation service licensees are required to notify the FCC when the name or mailing address is changed during the license term. The data are used to maintain an accurate licensee data base.

OMB No.: 3060-0202.

Title: Section 87.37, Developmental license.

Action: Extension.

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions.

Frequency of Response: Annually.

Estimated Annual Burden: 12 Respondents, eight hours each.

Needs and Uses: Requirement is necessary to gather data on developmental programs in the aviation service for which an authorization was granted. The data are used to determine whether the authorization should be renewed.

OMB No.: 3060-0192.

Title: Section 87.103, Posting station licenses.

Action: Extension.

Respondents: Individuals, State or local governments, Business, including small business, and Non-profit institutions.

Frequency of Response:

Recordkeeping Requirement.

Estimated Annual Burden: 47,800 Recordkeepers, 15 minutes each.

Needs and Uses: Licensees in the Aviation Service are required to maintain records which demonstrate that all transmitters are properly authorized. The data are used during inspections and investigations.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-23140 Filed 10-6-88; 8:45 am]

BILLING CODE 6712-01-M

Radio Advisory Committee Special Meeting

The Advisory Committee on Radio Broadcasting will hold a special meeting on Tuesday, October 25, 1988, at 1:30

pm, in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW., Washington, DC.

The sole purpose of this special meeting is to give consideration to the joint report prepared by the Technical and Allocations Subgroups for submission to the FCC commenting upon the Commission's *Inquiry* on possible AM rules revisions in MM Docket No. 87-267 and the provisions affecting the use of the expanded AM band (1605-1705 kHz) in the United States. Other business relating to radio broadcasting matters may also be raised by the participants to the meeting.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for October 25, 1988, may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Mr. Larry D. Eads, at FCC Headquarters. His telephone number is (202) 632-6485.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-23136 Filed 10-6-88; 8:45 am]

BILLING CODE 6712-01-M

Technical And Allocations Subgroups of Radio Advisory Committee Joint Meeting

The Technical and Allocations Subgroups of the Advisory Committee on Radio Broadcasting will hold a joint meeting at 1:30 pm on Tuesday, October 18, 1988, in the McCollough Room at the Headquarters of the National Association of Broadcasters, 1771 N Street NW., Washington, DC.

The Subgroups will consider recommending to the plenary Radio Advisory Committee the submission to the FCC of material prepared by working parties of the Subgroups for the purpose of assisting the Commission in deciding upon the desirability of initiating rule making on rules revisions to improve the AM radio broadcast service. Attention will be directed principally to matters raised in the comments submitted to the Commission in the *Inquiry* on possible AM rules revisions in MM Docket No. 87-267. The possible desirability of provisions affecting the use of the expanded AM band (1605 - 1705 kHz) will also be taken into account. Other business related to AM or FM broadcasting may be raised by participants at the October 18, 1988, joint meeting.

The Subgroups' meetings are continuing ones, and may be resumed

after each session at times and places decided by the participants. Meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824-5660, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254-3394.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-23138 Filed 10-6-88; 8:45 am]

BILLING CODE 6712-01-M

Invitation For Comments Regarding New York Metropolitan Area Regional Public Safety Plan

September 29, 1988.

The Commission has received the regional public safety plan for the New York Metropolitan Area (Region 8).

In accordance with the Commission's Report and Order in General Docket 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 8 consists of the following counties: Fairfield, New Haven, Litchfield, and Middlesex counties, Connecticut; Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester, Sullivan, Dutchess, and Ulster counties, New York; Bergen, Essex, Hudson, Morris, Passaic, Sussex, Monmouth, Warren, Somerset, Middlesex, Hunterdon, Mercer, and Union counties, New Jersey. (See Memorandum Opinion and Order, General Docket 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 88-476, New York Metropolitan Area—Region 8, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Fred Thomas, Office of Engineering and Technology, (202) 653-8112, or Marty Liebman, Private Radio Bureau, (202) 632-6497.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-23139 Filed 10-6-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Form Under Review by the Office of Management and Budget

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Form R-43 submitted for review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) has submitted to the Office of Management and Budget (OMB) a request for review of FMCS R-43, Request For Arbitration Panel. The request seeks OMB approval to extend the expiration date of Form R-43, from October 31, 1988 to January 31, 1989. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Information pertaining to the request is as follows:

Agency: Federal Mediation and Conciliation Service.

Title: Request For Arbitration Panel.

Form Number: Agency Form R-43; OMB No. 3078-0002.

Type of Request: Extension of expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 27,000 respondents per year; 4,500 reporting hours per year.

Needs and Uses: The need for this Form is to obtain information—name, address, type of assistance desired—so that FMCS can respond to requests for various arbitration services: e.g. furnishing a list of seven arbitrators to the parties.

Affected Public: Employers and labor unions.

Frequency: On occasion, as needed for arbitration.

Respondents Obligation: Voluntary.

OMB Desk Officer: Bernard Eydt (202) 395-6880.

Copies of the request for OMB review may be obtained from Ted M. Chaskelson, Attorney-Advisor, Federal Mediation and Conciliation Service, 2100 K Street, NW., Room 712, Washington, DC 20427 (202) 653-5305.

Written comments pertaining to the request should be sent to Bernard Eydt, OMB Desk Officer, Room 3100, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 1988.

Jack W. Johnson,
Deputy Director.

[FR Doc. 88-23131 Filed 10-6-88; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Correction; CapitalBanc Corp.

This notice corrects a previous Federal Register notice (FR. Doc. 88-22413) published at page 38344 of the issue for Friday, September 30, 1988.

Under the Federal Reserve Bank of New York, the entry for CapitalBanc Corporation, is amended to include the following activities:

(a) Domestic money orders up to a maximum face value of \$10,000; and (b) official checks with no maximum limitation on the face amount, subject to the conditions recited by the Board on its previous approvals of the identical activity (*See, The Hong-Kong and Shanghai Banking Corporation, Hong Kong et al., 73 Federal Reserve Bulletin 808-810 (1987)*). Delegated to Reserve Banks for action in SR 87-45 (STR).

Comments on this application must be received by October 13, 1988.

Board of Governors of the Federal Reserve System, October 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23121 Filed 10-6-88; 8:45 am]

BILLING CODE 6210-01-M

Citizens Independent Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than October 27, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Independent Bancorp, Inc.*, Logan, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Logan, Ohio, Logan, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *B.H.C., Inc.*, Arlington, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of Bostwick Banking Company, Arlington, Georgia.

2. *Florida Security Holding Corporation*, Maitland, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First American Bank of Orange County, Maitland, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation*, Urbana, Illinois; to acquire 80 percent of the voting shares of Community Bank of Mahomet, Mahomet, Illinois.

2. *Midwest Guaranty Bancorp, Inc.*, Detroit, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Midwest Guaranty Bank, Birmingham, Michigan, a *de novo* bank. Comments on this application must be received by October 21, 1988.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas; to acquire 100 percent of the voting shares of Benton State Bankshares, Inc., Benton, Arkansas, and thereby indirectly acquire Benton State Bank, Benton, Arkansas.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Trenton Trust Bancshares, Inc.*, Trenton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger of Trenton Trust Company, Trenton, Missouri, and Trenton Interim Trust Co. Comments on this application must be received by October 26, 1988.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Western Bancshares, Inc.*, Coos Bay, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Western Bank, Coos Bay, Oregon. Western Bank has made application to and received a license to conduct certain insurance activities from the Oregon Department of Insurance and Finance. Bank has been issued a general line and a life and health insurance license pursuant to Oregon Revised Statute 744.115(1) (a) and (b) and plans to engage in the sale of annuities under this authority. Comments on this application must be received by October 30, 1988.

Board of Governors of the Federal Reserve System, October 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23122 Filed 10-6-88; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.*, Kansas City, Missouri; to acquire 19.9 percent of the voting shares of Midwest Financial Group, Inc., Peoria, Illinois, and thereby indirectly acquire United Bank of Belvidere, Belvidere, Illinois; BancMidwest-McLean County, N.A., Bloomington, Illinois; The First National Bank in Champaign, Champaign, Illinois; and The Citizens National Bank of Decatur, Decatur, Illinois; The Dekalb Bank, Dekalb, Illinois; First Trust and Savings Bank of Kankakee, Kankakee, Illinois; First National Bank of Morton, Morton, Illinois; Commercial National Bank of Peoria, Peoria, Illinois; Prospect National Bank of Peoria, Peoria, Illinois; University National Bank of Peoria, Peoria, Illinois; United Bank of Illinois, N.A., Rockford, Illinois; and The Illinois National Bank of Springfield, Springfield, Illinois.

In connection with this application, Applicant will acquire Midwest Financial Life Insurance Company, Peoria, Illinois, and thereby engage in the sale of credit-related life, accident and health insurance pursuant to § 225.25(b)(8)(i); Midwest Financial Group Brokerage Services, Inc., Peoria, Illinois, and thereby engage in discount brokerage services pursuant to § 225.25(b)(15); Midwest Financial Investment Management Company, Peoria, Illinois, and thereby engage in providing investment or financial advice, such as portfolio investment advice and general economic information and advice, pursuant to § 225.25(b)(4) (iii) and (iv); Midwest Financial Mortgage Company, Peoria, Illinois, and thereby engage in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23123 Filed 10-6-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Gauthier, Michael M. et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Michael M. Gauthier*, Thibodaux, Louisiana; to retain 9.6 percent of the voting shares of First Acadian Bancshares, Inc., Thibodaux, Louisiana, and thereby indirectly acquire Acadian Bank, Thibodaux, Louisiana.

2. *Ralph H. Lord*, Jackson, Mississippi; to acquire an additional 43.71 percent of the voting shares of Citizens Capital Corp., Morton, Mississippi, and thereby indirectly acquire Citizens Bank and Trust Company, Morton, Mississippi.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Don C. McNeill*, Thomas, Oklahoma; to acquire an additional 17.59 percent of the voting shares of Thomas Bancshares, Inc., Thomas, Oklahoma, and thereby indirectly acquire The Bank of the West, Thomas, Oklahoma.

Board of Governors of the Federal Reserve System, October 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23124 Filed 10-6-88; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp. et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; to engage *de novo* through its subsidiary, Manufacturers Hanover Real Estate Investment Banking Group, Inc., New York, New York, in providing general investment advisory services to investors with respect to income-producing real property located in the United States pursuant to § 225.25(b)(4); performing appraisals of real estate

pursuant to § 225.25(b)(13); acting as a intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if (i) the financing arranged exceeds \$1 million; (ii) Applicant and its affiliates do not provide financing to the investors to acquire a real estate project for which Applicant arranges equity financing; (iii) Applicant and its affiliates do not have an interest in or participate in managing, developing, or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and (iv) the fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary pursuant to § 225.25(b)(14); and originating, placing, and servicing loans on commercial, residential and income producing property pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Comments on this application must be received by October 21, 1988.

B. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Sheboygan, Wisconsin; to engage *de novo* through its subsidiary, First Interstate Insurance Company of Wisconsin, Phoenix, Arizona, in the reinsurance of credit life and accident and health risks issued in connection with the extension of consumer installment credit by the subsidiaries of the bank holding company pursuant to § 225.25(b)(8) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City
(Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Stuart Family Partnership*, The Catherine Stuart Schmoker Family Partnership, The James Stuart, Jr. Family Partnership, The Scott Stuart Family Partnership, and their subsidiary, First Commerce Bancshares, Inc., all located in Lincoln, Nebraska, to engage *de novo* in providing data processing services pursuant to § 225.25(b)(7); and providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23125 Filed 10-6-88; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 29, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. *Neurofibromatosis 1: Attitudes Toward Predictive Genetic Testing*—NEW—A questionnaire to determine attitudes toward a predictive genetic test for Neurofibromatosis 1 (NF 1) will be administered to adult members of affected households. The survey is necessary to determine interest in the test, to assess perceived burdens of NF 1, for planning genetic counseling strategies, and to improve clinical management. Respondents: Individuals or households; Number of Respondents: 780; Frequency of Response: 1; Average burden per response: .333 hours (20 minutes); Estimated Annual Burden: 260 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. *State Medicaid Eligibility Quality Control (MEQC) Sample Selection List*—0938-0147—This form is a listing of Medicaid cases through a statistically reliable statewide sample of cases selected from the eligibility files. The submittal of the HCFA-319 is necessary for Regional Office (RO) control and tracking of state MEQC reviews. Respondents: State or local governments; Number of Respondents: 55; Frequency of Response: Monthly;

Average burden per response: 32 hours; Estimated Annual Burden: 21,120 hours.

2. *Evaluation of the Medicare Alzheimer's Disease Demonstration (Preclearance)*—NEW—The purpose of this contract is to determine the effectiveness, cost and impact on health status and functioning of providing comprehensive services to Medicare beneficiaries with Alzheimer's disease or related disorders. Respondents: Individuals or households. Since this is a preclearance request, burden estimates are not yet available. However, these estimates will be provided when specific survey instruments are developed and the final clearance request is submitted.

3. *Blood Bank Inspection Checklist*—0938-0170—Hospitals and clinical laboratories participating in Medicare must be in compliance with health and safety standards. These forms are used by State agency surveyors to record compliance with the standards. Respondents: State or local governments; Number of Respondents: 50; Frequency of Response: 30; Average burden per response: 30 minutes; Estimated Annual Burden: 750 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. *Quarterly Report of Collections*—OCSE-34—0970-0013—The information collected is needed to calculate grant awards, and to report to Congress on the Child Support Enforcement Program. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: Quarterly; Average burden per response: 8 hours; Estimated Annual Burden: 1,728.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Report Clearance Officer on 202-245-8511 for copies of package)

1. *Final Regulation on Coverage of Employees of State and Local Governments*—0960-0425—The information collected in accordance with this regulation is obtained from State governments or interstate instrumentalities desiring to obtain Social Security coverage for their employees or providing evidence of the dissolution of a political subdivision whose employees had such coverage. Respondents: State or local governments; Number of Respondents: 52; Frequency of Response: 10; Average burden per response: 1 hour; Estimated Annual Burden: 520 hours.

2. Employer Classification Update—0960-0262—The information is needed to clarify missing or incomplete data on the application for Employer Identification Number (SS-4). The responses are translated into various codes. The data combined with tax return data are useful in program planning, revenue estimates and employment studies. Respondents: Small businesses or organizations; Number of Respondents: 75,000; Frequency of Response: 1; Average burden per response: 3 minutes; Estimated Annual Burden: 3750 hours.

OMB Desk Officer: Justin Kopca.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245-2100
HCFR: (301) 966-2088
FSA: (202) 245-0652
SSA: (301) 965-4149
OS: (202) 245-6511
OHDS: (202) 472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: October 3, 1988.

James V. Oberthaler,
Deputy Assistant Secretary for Information
Resources Management.

[FR Doc. 23253 Filed 10-6-88; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket Nos. 85D-0246 and 85D-0467]

New Drug Applications; Final Guideline for the Clinical and Statistical Sections

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final "Guideline for the Format and Content of the Clinical and Statistical Sections of an Application" to market a new drug. The guideline is intended to assist applicants in presenting the clinical and statistical data required in new drug applications (NDA's).

ADDRESS: Written requests for a copy of the guideline to the Legislative, Professional, and Consumer Affairs Branch (HFD-365), Center for Drug Evaluation and Research, Food and

Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.) Written comments on the guideline to the Dockets Management Branch, HFA-305, Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda Carter, Center for Drug Evaluation and Research (HFD-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4300.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the final "Guideline for the Format and Content of the Clinical and Statistical Sections of an Application" to market a new drug. The guideline is intended to assist an applicant in presenting the clinical and statistical data required as part of an NDA under 21 CFR 314.50. The guideline described an acceptable format for organizing and presenting the clinical and statistical sections of an NDA. FDA's Center for Drug Evaluation and Research prepared the guideline.

On June 26, 1985 (50 FR 26411 at 26412), FDA published a notice of availability of the "Draft Guideline for the Format and Content of the Statistical Section of an Application" (Docket No. 85D-0246). On January 17, 1986 (51 FR 2574), FDA published a notice of availability regarding the "Draft Guideline for the Format and Content of the Clinical Data Section of an Application" (Docket No. 85D-0467). The agency received a wide range of formal and informal comments on the draft guidelines. In addition, on May 5 and 6, 1986, the draft guidelines were presented at a Drug Information Association (DIA) workshop where they received an in-depth critique. The draft guidelines were generally well received. In response to the comments, FDA has revised the draft guidelines in five important aspects.

1. The draft clinical and statistical guidelines have been combined into a single integrated guideline.

Although the draft clinical and statistical guidelines were intended to be compatible, there was some confusion as to which parts of the clinical and statistical sections of the applications were to be identical and which different. In addition, it was unclear whether the agency preferred one unified document or two separate documents for the report of a study. Combining the guidelines will resolve these ambiguities. The two submissions are to be identical except that certain portions of the clinical submission need not be included in the statistical section.

2. The final guideline gives greater discretion to applicants in providing full reports of controlled studies that are either nonsupportive or flawed.

The draft clinical guideline suggested that, with few exceptions, a completed controlled study should be presented as a full report even if the study failed to support effectiveness or if the sponsor considered it flawed, i.e., not an adequate and well-controlled study. While there are circumstances in which a close review of an obviously negative study is useful (e.g., a detailed analysis of procedures, study population, or concomitant therapy may provide an explanation of why the study was nonsupportive), this should be a matter of discretion because the search for such explanations is often fruitless. The sponsor may therefore submit a briefer description of nonsupportive or flawed studies. This brief description should allow the reviewer to understand the design and outcome of the study so that it can be considered as part of the total data base. In addition, the safety sections of such studies should continue to be fully presented.

3. More examples of tables and figures are provided.

4. The guideline provides simple outlines of what should be submitted in the clinical and statistical sections. The final guideline includes, in section VI, a general outline of the archival and technical parts of an application, and, in section VII, a full outline of the clinical and statistical sections of the application.

5. A new section, II.H.3., has been added that describes safety update reports.

FDA is issuing the final guideline under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose alternate procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort on an alternate procedure that the agency may later determine to be unacceptable.

Interested persons may submit written comments on the guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies

of any comments are to be submitted (except that individuals may submit one copy), identified with the docket numbers found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-23047 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Region VII—Kansas City; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (*Federal Register*, Vol. 46, No. 223, pp. 56927-56928, dated Thursday, November 19, 1981, and Vol. 48, No. 196, pp. 46446-46447, dated Wednesday, October 12, 1983, and Vol. 53, No. 139, pp. 27401-27402, dated Wednesday, July 20, 1988 is amended to reflect a reorganization within Region VII, Office of the Associate Administrator for Operations (AAO). The regional office is reorganizing from a functional structure to a programmatic structure with respect to the administration of the Medicare and Medicaid programs. The reorganization is similar to those occurring under the 2-year pilot tests in Regions I, III, and VIII. The reorganization abolishes the current Division of Program Operations and Division of Financial Operations and replaces them with the Division of Medicaid and the Division of Medicare.

The specific amendments of Part F. are described below:

- Section FP.20.D.3., Division of Financial Operations (FPD (II, IV-VII, IX, and X)C), is amended by deleting Region VII from the title. The new section title reads: Section FP.20.D.3., Division of Financial Operations (FPD (II, IV-VI, IX, and X)C).

- Section FP.20.D.4., Division of Program Operations (FPD (I, II, IV-VII, IX, and X)D), is amended by deleting the functional statement and administrative code for Region VII. The new section reads: Section FP.20.D.4., Division of Program Operations (FPD (II, IV-VI, IX, and X)D).

- Section FP.20.D.5., the Division of Medicaid (FPD (I, III, and VIII)E) is

amended to include the functional statement and administrative code for Region VII. The new section reads:

5. Division of Medicaid (FPD (I, III, VII, and VIII)E).

Under the direction of the HCFA Regional Administrator, plans, manages, and provides Federal leadership to State agencies in program implementation, maintenance, and the regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act and assures the propriety of Federal expenditures. Provides consultation and guidance to States on appropriate matters including interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States. Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and maintains official State plans and plan amendments for medical assistance. Provides consultation to States in the administration of the amount, duration, scope, and reimbursement of health services available under the State program. Reviews, approves, and monitors State reimbursement systems and determines the allowability of non-allowability of claims for Federal financial participation (FFP); and where State expenditures have not been in accordance with Federal requirements, takes action to disallow such claims. Stimulates State action toward achievement of selected program objectives and monitors their progress. Review States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the claims for allowability, and recommends appropriate action. Issues orders suspending FFP on behalf of State payments to Title XIX provider institutions and the revocation of such suspension orders. Supports, evaluates, and provides advice on State management information and claims payment systems. Implements Title XIX special initiatives, such as prepaid health plans, health maintenance organizations, and other special or experimental programs, and operations of major management initiatives such as quality control. Where appropriate, provides an opportunity for State input to operational plans, policy, regulations, legislation, and budget formulation. Responds to beneficiary, congressional, provider, and public inquiries

concerning Medicaid issues and takes appropriate action on individual case situations. Accepts and responds to Freedom of Information Act requests and on matters concerning the Privacy Act. Supports HCFA headquarters in activities concerning research and demonstration projects.

- Section FP.20.D.6., the Division of Medicare (FPD (K, III, and VIII)F) is amended to include Region VII. The new section reads:

6. Division of Medicare (FPD (I, II, VII, and VIII)F).

Under the direction of HCFA Regional Administrator, assures the effective administration of the Medicare program through the day-to-day working relationship with Medicare contractors, providers, physicians, the Social Security Administration (SSA) regional office and district office personnel, elements of the Office of the Inspector General, and other organizations and individuals concerned with program operations. Assures continuing surveillance and appraisal of Medicare contractors in the administration of health insurance provisions. Identifies problems and initiates action to ensure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth reviews to evaluate the effectiveness of the Medicare program. Conducts quality assurance programs and onsite performance appraisals and analyzes statistical performance reports. Negotiates and approves contractor budget modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities. Reviews and approves certain subcontracts and leases, monitors banking activities, and evaluates the cost allocation procedures of contractors. Conducts contractor appraisals. Interprets HCFA's institutional reimbursement policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve program objectives. Provides direction to Medicare contractors in carrying out their responsibilities for interfacing with peer review organizations. Establishes and maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Takes necessary action on matters relating to the Freedom of Information Act and the Privacy Act. Performs regional responsibilities relating to experimental and demonstration projects. Assumes

responsibility for program training and assures timely responses to congressional and public inquiries. Relates appropriately to central office components such as providing feedback on operations, activities, and problems, and by providing regional perspectives in the development of Agency policies, objectives, and work plans. In coordination with the Division of Medicaid, handles inter-program activities such as the Medicare buy-in for Medicaid beneficiaries.

Date: August 26, 1988.

Joseph R. Antos,

Acting Associate Administrator for Management and Support Services.

[FR Doc. 88-23173 Filed 10-6-88; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement, Proposed Funding Preferences, Proposed Funding Priorities and Proposed Special Consideration for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration announces that applications are now being accepted for Fiscal Year 1989 Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the proposed funding preferences, funding priorities and proposed special consideration stated below.

Approximately \$4.0 million is being made available by the Department of Health and Human Services Appropriations for Fiscal Year 1989. (Pub. L. 100-436). Approximately 6 awards will be made ranging from \$300,000 to \$2.0 million.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 57, Subpart MM.

Personnel of the Bureau of Health Professions have substantial programmatic involvement with the planning, developing, and administering of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent to permit appropriate direction and redirection of activities;
2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;
3. Participating with project staff in the development of funding projections;
4. Developing with project staff individual project data collection systems and procedures; and
5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in section 57.3804 of the program regulations;
2. The capability of the applicant to carry out the proposed project; and
3. The extent of the need of the area to be served by the proposed area health education centers.

In addition, certain preferential actions may apply in the implementation of this grant program. These categories of actions are defined below:

Funding Preferences

Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

Funding Priorities

Favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.

Special Considerations

Enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

In making awards for Fiscal Year 1989, the following funding preferences are being proposed:

- (1) Competing continuing applications;
- (2) New applications for planning and development projects under section 781(a)(1);
- (3) New applications for Special Initiatives under section 781(a)(2); and
- (4) Supplements to existing awards.

These preferences are established to maximize both Federal and non-Federal investments. The AHEC program requires a long-term strategy and commitment. Short-term funding of a year or two would allow most projects to complete only the planning and development of their programs.

Proposed Funding Priorities

Additionally, the following priorities are proposed:

- (1) Applications proposing centers in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or State designated clinic/center serving an underserved population. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. There are estimated 1,931 health manpower shortage areas with an estimated underserved population of 12,847,023. An estimated 4,139 primary medical practitioners are needed to remove these areas from the shortage designation. These designations include geographic areas, population groups and facilities. The proposed funding priority is designed to provide trainees with substantial training in health manpower shortage areas, community health centers, migrant health centers, and State facilities serving underserved populations. An applicant applying for this priority through a State or local designation must have written documentation from the appropriate State or local authority responsible for designating health personnel shortages for geographic areas, population groups and/or facilities. This documentation must indicate that the designated geographic areas, population groups, and/or facilities are part of a State or local plan to increase service access to underserved populations. These experiences are expected to have a positive influence on the selection of

practice locations of such trainees. The application of this funding priority is also to provide a more integrated federal strategy to the implementation of health professions assistance and primary health service programs.

(2) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases. Health professionals are increasingly required to provide a wide range of services to HIV-infected persons. However, widespread organized curricula offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

(3) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly. The population 65 years of age and over will increase about 2 percent a year between now and 2020 (compared to an increase of less than 1 percent for younger persons). The oldest old (85-plus) segment of the population will experience the most rapid growth before 2000. The youngest old (65-74) segment will increase fastest between 2000 and 2020. The older population will require expansion of a wide range of health services, including preventive, primary, long-term, hospice, and rehabilitation care. However, health providers lack adequate training needed to care for this aging population. The proposed funding priority is designed to provide increased emphasis on geriatrics training for all health professions trainees in the continuum of their training.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards. Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis on the principles and methods of health care quality assurance and risk management in the continuum of the health professions educational process.

Proposed Special Consideration

It is proposed to give special consideration to those applications proposing centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics.

These population groups continue to be underrepresented in the medical

profession and have insufficient access to primary medical care. Their representation should be increased to ensure equitable opportunities to a career in medicine and equal access to health care services. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, this special consideration is designed to increase the number of primary care underrepresented minority physicians.

Interested persons are invited to comment on the proposed funding preferences, funding priorities, and special consideration. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 7, 1988, will be considered before final funding preferences, funding priorities and special considerations are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preferences, funding priorities and special consideration will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 am and 5:00 pm.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (U-76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed application materials should be returned to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-05, Rockville, Maryland 20857, Telephone: (301) 443-6950.

The standard application form PHS 6025-1 HRSA Competing Training Grant

Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is December 20, 1988. Applications will be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: September 13, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-23209 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement, Special Consideration and Proposed Funding Priority for Grants for Establishment of Departments of Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 780 of the Public Health Services Act, as amended by Pub. L. 99-129 and invites comments on the proposed funding priority set forth below.

Approximately \$4.0 million is being made available by the Department of Health and Human Services Appropriations for Fiscal Year 1989. (Pub. L. 100-436). In addition the funding noncompeting continuations, it is estimated that 34 competing projects averaging \$117,000 will be supported.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the

administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR Part 57, Subpart R.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the project requirements in section 57.1704;
2. The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;
3. The qualifications of the proposed staff and faculty of the unit; and
4. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Section 780, as amended by Pub. L. 99-129, requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Special Consideration

A special consideration will be given to applicants that demonstrate the potential to continue the project on a self-sustaining basis. This special consideration was implemented as a funding preference in Fiscal Year 1988 and the Department is extending it as a

special consideration in Fiscal Year 1989.

Proposed Funding Priority

It is proposed to give a funding priority to applications which show a representation of underrepresented minority faculty in a family medicine administrative unit which is at least twice the National average of 2.8 percent in U.S. medical schools or can document extent of net increase of underrepresented minority faculty in the unit (i.e., Black, Hispanic and American Indian/Alaskan Native), over average of the past three years.

The percentage of underrepresented minority faculty in U.S. medical schools remains low, yet studies indicate a strong relationship between role models and student aspirations and achievements. This is believed to have possible consequences of a static minority applicant pool, lower minority enrollments, and higher attrition and lower graduation rates among minority students.

Therefore, the presence of minority role models are considered positive support that may alleviate some of the difficulties and improve attrition and graduation rates of underrepresented minority students.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 7, 1988, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice stating whether the final funding priority will be applied.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Application materials should also be mailed to the above address. Questions regarding programmatic information should be directed to: Division of Medicine, Primary Care Medical Education Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been

approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline is December 14, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 19, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-23207 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement and Proposed Funding Preferences for Grants for Geriatric Education Centers

The Health Resources and Services Administration announces the acceptance of applications for Fiscal year 1989 Grants for Geriatric Education Centers under the authority of section 788(d) of the Public Health Service Act, as amended by Pub. L. 99-129 and section 301 of the PHS Act, and invites comments on the proposed funding preferences set forth below.

To be eligible for a grant under section 788(d) of the PHS Act, the applicant must meet the requirements of a health professions school as defined by section 701(4), program for the training of physician assistants as defined in section 701(8) or a school of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of organizational settings will be considered for geriatric education center grants under section 301 of the PHS Act.

Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin

Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Approximately \$600,000 is being made available by the Department of Health and Human Services appropriations for Fiscal Year 1989. (Pub. L. 100-436). In addition to funding noncompeting continuations, it is estimated that three projects averaging \$200,000 will be supported.

Grants may be awarded to support the improvement and development of collaborative arrangements involving several health professions. These arrangements, called Geriatric Education Centers (GECs) are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged.

Projects supported under these grants may address any combination of the statutory purposes listed below:

- (a) Improve the training of health professionals in geriatrics;
- (b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
- (c) Expand and strengthen instruction in methods of such treatment;
- (d) Support the training and retraining of faculty to provide such instruction (other than training and retraining of faculty of schools of medicine and osteopathy);
- (e) Support continuing education of health professionals and allied health professionals who provide such treatment; and
- (f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in variety of ways, emphasizing multidisciplinary, as well as discipline specific approaches to the development of geriatric education resources. For example:

- Health professions schools within a

single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the applicant.

- Institutions with limited geriatric education resources and traditional linkages with geographic areas with substantial geriatric education needs may seek to establish Geriatric Education Centers designed to enhance and expand the capability of collaborating professional schools to serve as a geriatric education resource for such areas.

Projects may support the development of Geriatric Education Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

After a peer review group, as required by section 788(d)(2)(B) of the Act, composed principally of non-Federal experts, makes recommendations concerning each application, the Secretary will consult with the National Advisory Council on Health Professions Education, established in section 702 of the Act, with respect to such applications. The Secretary will decide which applications to approve by considering, the following:

- (1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.3904;
- (2) The adequacy of the qualifications and experience of the staff and faculty;
- (3) The administrative and managerial ability of the applicant to carry out the proposal in a cost-effective manner; and
- (4) The potential of the project to continue on a self-sustaining basis.

Questions concerning the programmatic aspects of grants should be directed to: Geriatric Program Representative, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-103, Rockville, Maryland 20857, Telephone: (301) 443-6887.

Request for application materials and

questions regarding grants policy should be directed to: Grants Management Officer (D-31), Bureau of Health Professions; Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Applications should be mailed to the Grants Management Officer at the above address.

The standard application, form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program, have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 9015-0060.

The application deadline is December 21, 1988. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

The following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed Funding Preferences

In determining the order of funding of competing applications which have been recommended for approval, it is proposed to give a funding preference over all over applications recommended for approval to applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. In addition, the priority scores of approved applications will be significantly improved for each of the criteria listed below:

- Applications which identify minority faculty or scholars with expertise in minority aging with substantial roles in carrying out the project. (Only individuals already employed or recruited may be included).

- Applications documenting formal linkages (such as subcontracts, clinical teaching affiliation agreements, etc.) with predominantly minority educational institutions or health facilities to accomplish specific aspects of the project protocol (e.g., involving minority faculty, students, or practitioners, developing curricula or expanding teaching concerning minority elderly, providing trainees with experience in caring for minority elderly, etc.).

- Competing continuation applications or other applications from existing GECs which contain progress reports documenting that underrepresented minority enrollees (i.e., have participated or committed to participating in a focused/intensified GEC training program of 40 hours or more) were equal to or greater than representation of those minorities in the general population, or have increased annually for at least three years.

In assigning merit scores to approved proposals, peer reviewers will give special consideration to the following:

- Projects which will provide training for faculty from four or more health professions, at least one of which must be allopathic or osteopathic medicine, with respect to the treatment of health problems of the elderly by multidisciplinary teams of health professionals. A one-year retraining program for faculty in schools of medicine and osteopathy in geriatrics or a one-year or two-year internal medicine or family medicine fellowship program as identified in section 788(e)(3) of the Act is not eligible under section 788(d) of the PHS Act and does not qualify for this consideration.

- Projects which currently have or

plan to provide for a high degree of areawide collaboration.

- Projects which provide organizational or other arrangements for participation by the social and behavioral science disciplines.

Interested persons are invited to comment on the proposed funding preferences. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 7, 1988 will be considered before the final funding preferences are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preferences will be applied.

Written comments should be addressed to: Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-101, 5600 Fishers Lane, Rockville, MD 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: September 13, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-2302 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement and Proposed Funding Priorities for Grants for Programs for Physician Assistants

The Health Resources and Services Administration announces that applications for Fiscal Year 1989, Grants for Programs for Physician Assistants are being accepted under the authority of section 783(a) of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the proposed funding priorities set forth below.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Act.

Approximately \$4.5 million is being made available by the Department of Health and Human Services Appropriations for Fiscal Year 1989. (Pub. L. 100-436). In addition the funding noncompeting continuations, it is estimated that 30 competing projects averaging \$117,000 will be supported.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

Each application must contain or be supported by assurances that the applicant institution has appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

The Health Professions Training Assistance Act of 1985, Pub. L. 99-129, requires that the regulations for section 701(8) of the PHS Act be amended to (1) limit eligibility to programs that have as their objective the training of graduates who are capable of providing primary health care and (2) require as a condition of approval that applicant programs provide training in the areas of primary care, disease prevention, health promotion, geriatric medicine and home health care. An amendment to the regulations 42 CFR Part 57, Subparts H-I, was published on June 29, 1987, (52 FR 24158) defining these terms.

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;

2. The potential effectiveness of the project in carrying out the purposes of section 783 of the PHS Act and 42 CFR, Subparts H-I;

3. The capability of the applicant to carry out the proposed project;

4. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

5. The soundness of the fiscal plan for assuring effective use of grant funds;

6. The potential of the project to continue on a self-sustaining basis after the period of grant support; and

7. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

Proposed Funding Priorities

In determining the order of funding of approved applications it is proposed to give a funding priority to the following:

(1) Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in training program.

These population groups continue to be underrepresented in the physician assistant work force and have insufficient access to primary medical care. Their representation should be increased to ensure equitable opportunities to a career as a physician assistant and equal access to health care services. Studies show that minority physician assistants provide a greater proportion of health care for medically underserved populations than other United States physician assistants. Therefore, this funding priority is designed to increase the number of primary care underrepresented minority physician assistants.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers.

There are estimated 1,931 health manpower shortage areas with an estimated underserved population of 12,847,023. An estimated 4,139 primary medical practitioners are needed to remove these areas from the shortage designation. These designations include geographic areas, population groups and facilities. The proposed funding priority

is designed to provide trainees with substantial training in health manpower shortage areas, community health centers, migrant health centers, and State facilities serving underserved populations. An applicant applying for this priority through a State or local designation must have written documentation from the appropriate State or local authority responsible for designating health personnel shortages for geographic areas, population groups and/or facilities. This documentation must indicate that the designated geographic areas, population groups, and/or facilities are part of a State or local plan to increase service access to underserved populations.

These experiences are expected to have a positive influence on the selection of practice locations of such trainees. The application of this funding priority is also to provide a more integrated Federal strategy to the implementation of health professions assistance and primary health service programs.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases. Health professionals are increasingly required to provide a wide range of services to HIV-infected persons. However, widespread organized formal curricula offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards. Assuring quality in the health care system is increasingly becoming the responsibility of health care providers. The proposed funding priority is designed to encourage increased emphasis of the principles and methods of health care quality assurance and risk management in the continuum of the health professions educational process.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone (301) 443-6960.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of

Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-13, Rockville, Maryland 20875, Telephone: (301) 443-6950.

To receive consideration, applications must meet the deadline of December 12, 1988, which means they must either be:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 7, 1988, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: September 13, 1988.

John H. Kelso,

Acting Administrator,

[FR Doc. 88-23208; Filed 10-6-88; 8:45 am]

BILLING CODE 4160-75-M

Designation of Medically Underserved Populations Recommended by the Chief Executive Officer and Local Officials of a State

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Under the provisions of section 330(b) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(b)(6), as recently amended by Pub. L. 99-280, the Governors of the States of Vermont and Massachusetts have asked the Secretary of Health and Human Services (HHS) to designate specific populations within their States as medically underserved populations (MUPs). Also, under section 330(b)(3) of the PHS Act an area in New York State has been proposed for MUP designation. This notice provides an opportunity for local officials and appropriate Community Health Center organizations of the States of Vermont, Massachusetts and New York to comment on the proposal to designate as MUPs the populations described in this notice. Also, this notice provides that vehicle for "local officials" to recommend MUP designations for the populations which are specified in this notice.

DATE: Comments should be in writing and should be received by November 7, 1988. If no objections are received within this period, the populations specified in this notice will be designated as MUPs by the Secretary. If valid objections are received, the Secretary will, within 75 days from the date of publication of this notice, review any comments received together with the data already provided and any relevant information otherwise available, will provide written responses to the commenters, and will grant, modify or deny designation of the population(s) as MUPs, as appropriate, based on the review.

ADDRESS: Mail comments to Ms. Rhoda Abrams, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7-15, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bohrer, Director, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, 5600

Fishers Lane, Room 7A-55, Rockville, Maryland 20857, (301) 443-2260.

SUPPLEMENTARY INFORMATION: Section 330 of the PHS Act provides that grants may be made to public and nonprofit private entities to plan, develop and operate Community Health Centers which serve medically underserved populations. The PHS Act and implementing regulations define a medically underserved population as the population of an urban or rural area designated by the Secretary as having a shortage of personal health services. Section 330(b)(3) of the PHS Act (42 U.S.C. 254c(b)(3)) and implementing regulations define a medically underserved population as a population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or population group designated by the Secretary as having a shortage of such services. On September 2, 1975, and October 15, 1976, the Secretary published criteria in the *Federal Register* for use in designating and prioritizing such medically underserved areas (MUAs) periodically, and the Secretary has made designations and dedesignations of MUAs using these criteria. According to the published *Federal Register* criteria, a population must have an Index of Medical Underservice score of 62 or less to be recommended for additions to the MUA list.

However, the PHS Act, as recently amended by Pub. L. 99-280, provides at section 330(b)(6) that the Secretary may also designate a medically underserved population (MUP) that does not meet the published medically underserved population criteria (HHS is promulgating regulations which will specify these criteria), if the chief executive officer and the local officials of the State in which such a population is located recommend the designation of that population, based on unusual local conditions which are a barrier to access to, or availability of, personal health services.

The amendments to section 330 made by Pub. L. 99-280 (section 330(b)(5)) also provide that the Secretary must notify and consult with the chief executive officer of the State, local officials of the State, and the State organization, if any, which represents a majority of Community Health Centers in such State, before designating or terminating designation of MUPs. The regulation which HHS is currently developing will specify MUP criteria, procedures for MUP designation of populations which do not meet the MUP criteria, and procedures for providing notice and opportunity for comment. The Secretary

has determined that it would be inappropriate to delay acting on requests of Governors Kunin and Dukakis or on the request from the State of New York until the regulations are published. Therefore, the Secretary is publishing the notice as a way of specifically seeking comments and recommendations from local officials of the particular areas involved as well as from the organization which represents a majority of the Community Health Centers in the State on these proposed designations and from other interested or affected parties.

The MUP justifications, which have been submitted by the Governors/States and which are presented in this notice, have been reviewed by HHS and are considered acceptable to support the designations of these populations as MUPs subject to any comments received as a result of publication of this notice.

The populations which have been recommended for designation are:

(1) Vermont

The population of the 15 town Lyndonville/Concord, Vermont area. The area in question has an estimated 1988 population of 15,103 people. The area is in an economically depressed rural northeast quadrant of the state and includes the towns of Lyndonville, Sutton, Burke, Newark, Sheffield, Wheelock, Kirby, Concord, East Haven, Glover, Waterford, Lunenburg, Victory, Guildhall, and Granby. Information from the Vermont Health Policy Council, the State's health planning agency, indicates that 16.7% of this service area's population is below the poverty level and 12.8% of the population is over age 65.

The area has a slightly higher percentage of Medicaid eligible individuals (8.51%) than does the state as a whole (7.63%). In addition, Caledonia county, where many of the service area towns are located, has an elderly population poverty rate which exceeds the state average elderly poverty rate by 15%.

Presently, two physicians and two mid-level practitioners are providing primary health care within this area. The physicians are spending an increasing amount of time on practice administration, and, as a result, have less time with which to provide patient care. They have expressed an interest in joining an existing group of health centers under the aegis of the Northern Counties Health Centers, Inc. Under this organizational structure the administration burdens such as patient billing, obtaining second and third party (insurance) payments and patient

scheduling and follow-up would be performed by the organization staff. In addition, with MUP designation of the service area population, the practice would be eligible for certification as a rural health clinic. This designation will improve the financial viability of this practice, and will help to ensure retention of these physicians in the area.

The recruitment and retention of physicians to rural areas is a major challenge. Continued administrative burdens may discourage them from continuing to practice or force them to limit the number of Medicaid and uninsured individuals they serve, or to leave the area. Relief of major administrative responsibilities will allow them to continue providing access to an otherwise unserved population. It will also integrate them into an organized primary care network.

(2) Massachusetts

People with Acquired Immune Deficiency Syndrome, AIDS Related Complex and Human Immunodeficiency Virus infection in the City of Boston.

The Fenway Community Health Center (FCHC) has been serving the needs of the Fenway neighborhood and members of the gay community throughout Boston and New England for the past 17 years. Approximately 70% of the FCHC's patient populations at risk of AIDS. The center has been dramatically affected by the AIDS epidemic. The Health Center's unique services to AIDS and HIV-infected patients contribute to a patient base that is unusual for a community health center. One-third of FCHC's patient population come from Boston's Fenway neighborhood, one-third from the Greater Boston area and one-third from the rest of New England.

Current city, state and epidemiologic projections indicate that approximately 6,000 cases of AIDS as defined by the Centers for Disease Control will exist in Massachusetts by 1991. It is projected that approximately 807 of these 6,000 cases will be treated in the Boston Standard Metropolitan Area, up to 757 will be among sexually active homosexuals, and between five and ten times that many people will be in varying stages of HIV-infection, placing extraordinary demands on Boston area hospitals and ambulatory medical settings.

The Fenway Community Health Center identified Boston's first cases of AIDS in 1981 and has been a primary source of referral to the New England Deaconess and other area hospitals since then. FCHC has developed a reputation for expertise in the early detection, identification, diagnosis and

treatment of people with HIV-infection, AIDS-related complex (ARC) and AIDS, with care provided in a confidential, humane environment.

In 1987, FCHC medical staff performed 13,000 medical encounters, 1,300 mental health encounters, 1,600 AIDS-related research encounters and provided HIV-testing and counseling. Approximately 9,000 patients were seen during this period. One-third of the total patient visits were AIDS or HIV-related. From July 1987 to March 1988, the number of monthly visits by patients with AIDS climbed from 42 to 87.

The FCHC's anonymous HIV Alternative Test Site is the largest in New England and sees 45% of all people tested at the eight test sites in Massachusetts funded by the Department of Public Health. This program's waiting list is currently four months long, pointing to a need for the unique and special services offered by FCHC.

FCHC desperately needs physician personnel to augment its existing staff to enable the continued provision of services to patients affected by AIDS and HIV. The search for qualified medical personnel willing to work with AIDS patients for the salaries which FCHC can offer has become more and more onerous. It took almost a year to recruit a new primary care physician. Two separate ads ran for a period of six months in an attempt to recruit a lab assistant and a lab technician, but no appropriate lab technician has been found.

The FCHC annual patient visit/physician ratio has dropped dramatically in recent years. Several years ago, four full-time equivalent (FTE) physicians were able to handle 15,000 to 16,000 medical visits per year (as compared to the current 13,000 medical visits discussed earlier). This is due to an increase in the length of time needed to accurately diagnose and treat patients at risk for AIDS. Visits that previously took 15 minutes now require a 45-60 minute work-up.

The increasing number of AIDS patients treated at FCHC explains the lowered patient visit/physician ratio as well. Last year at this time (March 1987) FCHC was treating 20 AIDS patients a month. The figure has now reached 94. Despite efforts to make increased home care possible, many patients are so severely ill that they require increased physician attention.

While FCHC succeeded in attracting funding from the State and from the Centers for Disease Control to conduct research on the natural history and transmission of HIV (Human Immunodeficiency Virus) infection, the

center was denied Federal funding under section 330 of the PHS Act on the grounds that it had not demonstrated that its catchment area fit the federal definition of a medically underserved population (MUP). FCHC had requested this funding to set up a special Human Immunodeficiency Virus Treatment Center to provide treatments and drug therapies for AIDS and HIV-infected people, which are currently available only in a hospital setting, available on an out-patient basis.

Give the exorbitant costs of hospitalization, FCHC has realized that the bulk of AIDS work must shift to ambulatory care settings and home care as much as possible. Through FCHC's planned HIV Treatment Center, intravenous drug therapies and other treatment would be administered on an out-patient basis, decreasing the frequency and length of hospitalization. In addition, FCHC could identify other cost cutting measures, implement case management systems and provide reports usable by other federally funded community health centers in managing the epidemic. It is believed that FCHC could provide a model that could be rapidly replicable in other community health settings.

(3) New York

The Hudson Valley Health Systems Agency, Inc is requesting that census tracts 1.01, 1.02, 2.01, 2.02, 2.03, 3.00, 4.01, 4.02, 5.00, 6.00, 10.00, 11.01, 11.02, 12.00, 13.01, 13.03, and 16.00 in the City of Yonkers be designated as a medically underserved population. This population represents the service area of a satellite clinic of the Mount Vernon Neighborhood Health Center in Southwest Yonkers and is a rational service area, and was recently designated by HRSA as a health manpower shortage area.

This area scores 41.2 on the index of Medical Underservice (IMU). This score is considerably lower than the required upper limit for designation of 62.0

Factor	Percent/ Ratio	Weight
Infant Mortality.....	15.8	19.5
Population 65+	13.7	18.9
Population Below Poverty	40.4	1.3
Physician to Population Ratio.....	.131	1.5
		41.2

This data has been reviewed by the Division of Primary Care Service and found to accurate.

Dated: September 30, 1988.

David N. Sundwall,
Administrator.

[FR Doc. 88-23157 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Privacy Act of 1974; Addition of a Routine Use to Existing System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new routine use.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to add a new routine use to nine systems of records.

DATES: PHS invites interested parties to submit comments on the proposed routine use on or before November 7, 1988. PHS will adopt the new routine without further notice 30 days after the date of publication, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: PHS Privacy Act Officer, Room 17-41, Parklawn Building, 5000 Fishers Lane, Rockville, Maryland 20857, (301) 443-3917. (This is not a toll-free number.) Comments received will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Johanna O. Bonnelycke, PHS Privacy Act Officer, at the above address.

SUPPLEMENTARY INFORMATION: PHS proposes to disclose to State Boards of Medical Examiners and to equivalent State licensing boards those professional review actions which adversely affect the clinical privileges of health care professionals who (1) are current or former Federal employees, or (2) provide health care services under PHS auspices. State Boards of Medical Examiners and equivalent State licensing boards are required by law to report such adverse information to the National Practitioner Data Bank.

PHS will make such disclosure from the following nine Privacy Act systems of records:

1. 09-37-0002 PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG.
2. 09-37-0005 PHS Commissioned Corps Board of Proceedings, HHS/OASH/OSG.
3. 09-37-0006 PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/OASH/OSG.

4. 09-30-0029 Records of Guest Workers, HHS/ADAMHA/OA.

5. 09-30-0030 Records of Visiting Fellows, HHS/ADAMHA/OA.

6. 09-15-0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA.

7. 09-15-0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA.

8. 09-25-0108 Personnel: Guest Researchers/Student Scientists/Scientists Emeriti, HHS/NIH/DPM.

9. 09-25-0140 International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

The following routine use will be added as the last routine use to each of the nine systems of records:

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

* * * * *

Disclosure may be made to State Boards of Medical Examiners and to equivalent State licensing boards of professional review actions which adversely affect the clinical privileges of health care professionals who either:

(1) Are or were employed by the Federal Government;

(2) Provide or have provided health care service under a fee-for-service contract with the Federal Government; or

(3) Provide or have provided health care services on behalf of the Federal Government as a volunteer or as a visiting fellow.

Boards of Medical Examiners and equivalent State licensing boards are required by the Health Care Quality Improvement Act of 1986 and by the Medicare and Medicaid Patient and Program Protection Act of 1987 to report this information to the National Practitioner Data Bank.

* * * * *

Date: September 29, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

[FR Doc. 88-23172 Filed 10-6-88; 8:45 am]

BILLING CODE 4160-16-M

Social Security Administration

Social Security Disability Program Demonstration Project

SUMMARY: The Commissioner of Social Security announces the following demonstration project to be conducted under the authority of Pub. L. 96-265, section 505(a), as amended by Pub. L. 99-272, section 12101. The project will test the concept that Social Security disability insurance (SSDI) beneficiaries

will enter supported employment programs if assurances are given that the trial work period (TWP) will not begin until after intensive training is completed. Deferral of the application of the TWP through the end of intensive on-site job training will encourage SSDI beneficiaries to participate more in supported employment programs, and thereby increase their chance to be successful in the competitive work environment and reduce the need for Social Security benefits. The project will not require any expenditure of grant funds for its effectuation and completion. The requirement in section 222(c)(4)(A) of the Social Security Act (the Act) which provides that any month in which a beneficiary performs certain work activity must be counted in determining his or her 9-month TWP, will be waived to conduct this project. We are publishing this notice to comply with 20 CFR 404.1599, which requires publication of a notice in the *Federal Register* before starting certain demonstration projects.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Morrison, Social Security Administration, Office of Disability, 2223 Annex, 6401 Security Boulevard, Baltimore, Maryland 21235 Phone (301) 965-0091.

Background Information

The Social Security Disability Amendments of 1980, Pub. L. 96-265, section 505(a), as amended by Pub. L. 99-272, section 12101, directs the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects designed to: (1) Encourage disabled beneficiaries to return to work, and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Act. Section 505 of Pub. L. 96-265, as amended by Pub. L. 99-272, section 12101, also authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII of the Act as necessary to conduct these experiments and demonstration projects. This includes the authority to waive the requirement in section 222(c)(4)(A) of the Act which provides that any month in which an individual performs "services," as defined in section 222(c)(2) of the Act, must be counted in determining his or her 9-month TWP.

Overall Objectives

SSA wishes to assist SSDI beneficiaries in returning to competitive employment. SSA's focus is on significantly improved integration and

use of VR and other employment program resources providing for more employment opportunities, better mechanisms for identifying and referring candidates for rehabilitation and other employment services, more effective incentives for rehabilitation and employment, increased access to employment service systems and networks, and more effective and efficient employment intervention for beneficiaries.

Description of the Demonstration with the Pennsylvania Office of Vocational Rehabilitation

"Pennsylvania's Waiver of Trial Work Period (TWP) for SSDI Beneficiaries in Supported Employment Program;" Projected duration: 24 months. The project will provide for one-on-one training of participants and provide for support using a job coach in supported employment programs. Individuals in supported employment will progress through two distinct phases: (1) On-site training; and (2) ongoing support phase. Wages are earned through both phases; however, the beneficiary will receive a waiver delaying the initiation of the TWP until he/she enters the ongoing support phase. A total of 3-5 SSDI beneficiaries at each of the 11 sites will be placed in the program (total 33-55). Data collected on receipt of SSA benefits during pre- and post-employment using the project period as a base will provide data on the effectiveness of the waiver of the TWP provisions.

Statutory Provision to be Waived

Section 222(c)(4)(A) of the Act is being waived for the purpose of conducting this demonstration project. Section 222(c) of the Act provides a "period of trial work" of 9 months' duration which offers disabled beneficiaries the opportunity to test their ability to work without losing benefits; the 9 months need not be consecutive. Section 222(c)(4)(A) of the Act requires that any month in which a beneficiary renders "services," as defined in section 222(c)(2), must be counted in determining his or her 9-month TWP. The requirement in section 222(c)(4)(A) will be waived for beneficiaries participating in the demonstration. Under this waiver, application of the TWP will be deferred for up to 6 consecutive months while the participant is receiving on-site job training under the Supported Employment Program. The waiver will be granted to participants who are eligible for all or part of the 9 months (not necessarily consecutive) of trial work, and will be effective for 6

consecutive months or, if earlier, until the participant completes the on-site training phase of the Supported Employment Program.

Authority: Sec. 505(a) of the Social Security Disability Amendments of 1980, Pub. L. 96-265, as amended by Pub. L. 99-272, sec. 12101.

Dated: September 8, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 88-23158 Filed 10-6-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-886; FR-2569]

Delegation of Authority; Assistant Secretaries and Inspector General

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: The final common rule on Government-wide debarment and suspension published on May 26, 1988 (53 FR 19161) which becomes effective October 1, 1988, designates as debarment and suspending officials the agency head or officials designated by the agency head. The Secretary is delegating the authority to impose debarments and suspensions of contractors and participants to any Assistant Secretary and the Inspector General.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Office of General Counsel, Room 10266, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 755-7200 (This is not a toll free number).

Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretaries and the Inspector General the authority to impose suspension or debarment on contractors and participants pursuant to the provisions of 24 CFR Part 24.

Dated: September 28, 1988.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 88-23256 Filed 10-6-88; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-88-1873]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: October 3, 1988.

David S. Cristy,
Deputy Director, Information Policy and
Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Homeless Assistance Plan (FR-2386).

Office: Community Planning and Development.

Description of the need for the Information and its Proposed Use: States, metropolitan cities, and urban counties are required to submit a comprehensive homeless assistance

plan and annual progress report in order to receive assistance under Title IV—Housing Assistance.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Plan.....	350		1		32		11,200
Annual report.....	350		1		16		5,600

Total Estimated Burden Hours: 16,800.
Status: Extension.

Contact: James R. Broughman, HUD, (202) 755-5977, John Allison, OMB, (202) 395-6880.

Date: October 3, 1988.

[FR Doc. 88-23257 Filed 10-6-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

OMB Approval Number: 1018-0012.

Abstract: The Service regulates and enforces the import/export of fish and wildlife as required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and several laws. The information collected from importers, exporters, customs brokers or agents, shipping agents, or freight forwarders, is necessary to complete an annual report,

which is a treaty obligation under CITES, and to regulate import/export of fish and wildlife, as required by regulations contained in 50 CFR 14.

Service Form Number: 3-177.

Frequency: On occasion or annually.

Description of Respondents:

Individuals and households, businesses, public and private educational institutions, and Federal, State, or local governments.

Estimated Completion Time: The reporting burden is estimated to be 15 minutes per response.

Annual Responses: 85,000 respondents (each respondent averages 4 responses annually).

Annual Burden Hours: 21,250.

Service Clearance Officer: James E. Pinkerton, 202-653-7500, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: September 16, 1988.

Marvin L. Plenert,

Assistant Director, Refuges and Wildlife.

[FR Doc. 88-23233 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1990

Applications are invited for research projects under the NEHRP.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Pub. L. 95-124. (42 U.S.C. 7701, *et. seq.*)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications must be received on or before January 26, 1989.

Program Information: This program supports research related to the following general areas of national interest: (1) Current tectonic and earthquake potential studies—analysis of regional seismic network data, identification of source zone characteristics, and earthquake potential estimates; (2) earthquake prediction research—prediction methodology and evaluation, focused earthquake prediction experiments, and theoretical, laboratory, and fault zone studies; and (3) regional earthquake hazards assessments—geologic and seismic hazard evaluation and synthesis, loss estimation modeling, and implementation.

Application Forms: The program announcement is expected to be available on or above November 1, 1988. You may obtain a copy of announcement 7500 by writing to Lisa Tubbs, U.S. Geological Survey, Office of Procurement and Contracts—MS 205C., 12201 Sunrise Valley Drive, Reston, VA 22092.

Organizations that applied for a FY 1988 award and organizations that requested to be retained on the mailing list since the last announcement, will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering—MS 905, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6722.

(Catalog of Federal Domestic Assistance Number 15.807)

Date: September 30, 1988.

William F. Gossman,
Acting Assistance Director for
Administration.

[FR Doc. 88-23027 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[FES 88-42; AK-060-09-4432-09]

Availability of the Central Arctic Management Area Wilderness Recommendations; Final Environmental Impact Statement for Lands Within the Arctic District, Alaska

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of the Central Arctic Management Area Wilderness Recommendations Final Environmental Impact Statement (EIS) for lands within the Arctic District, Alaska.

SUMMARY: This EIS assesses the effects of wilderness designation or nondesignation of 3,680,000 acres of Federal land located on the north slope of Alaska. The lands studied were described by section 1001 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). The lands described by section 1001 were designated as a wilderness study area by section 1004 of ANILCA and are now referred to as the Central Arctic Management Area (CAMA) Wilderness Study Area (WSA). The alternatives analyzed included: (1) A No Wilderness/No Action Alternative; (2) an All Wilderness Alternative; (3) the Partial Wilderness Alternative; (4) the OoLamagavik-Etivluk Alternative; and (5) the Proposed Action.

The Proposed Action for the CAMA WSA is as follows:
Acres suitable (41,000); Acres
Nonsuitable (3,639,000); Total (3,680,000)

The Bureau of Land Management wilderness proposal will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on the proposal will be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10(b)(2).

A limited number of individual copies of the EIS may be obtained from the District Manager, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska, 99709 or call (907) 474-2301.

Copies are also available at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street, NW., Washington, DC 20240.

Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Bureau of Land Management, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT: M. Thomas Dean, District Manager, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska 99709.

Date: September 29, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-23040 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-010-09-4322-02; 1784 (010)]

Arizona Strip District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Advisory Board will meet Friday, October 28, 1988 at 9 in the Holiday Inn, 850 South Bluff Street in St. George, Utah. Primary topics on the agenda are range improvement projects, grazing regulations, land use planning, riparian and desert tortoise management.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Board at 9:30 am.

Dated: September 29, 1988.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 88-23135 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-32-M

[OR-050-4410-10:GP9-002]

Oregon; Prineville District Advisory Council; Meeting

September 30, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District

Advisory Council will be held on November 17, 1988. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) Discussion of the Final Brothers/LaPine Resource Management Plan; (2) the scoping of the Two Rivers/John Day Resource Management Plan amendment; (3) the progress on the Prineville District land exchange program; (4) progress on the development of the Deschutes and John Day River Management Plans; (5) the Omnibus Wild and Scenic River legislation as it affects the Prineville District and (6) the Special Recreation Area Management Plan for Oregon and Washington.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral comments to the Board is requested to contact the District Manager at the above address prior to November 14, 1988.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: September 30, 1988.

Ronald W. Van Domelen

Acting District Manager.

[FR Doc. 88-23134 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-010-08-4310-11]

Lifting of Fire Restrictions; Worland District, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Lifting of fire restrictions.

SUMMARY: Fire restrictions that were imposed in the Worland District on August 25, 1988 because of extreme fire danger are now being lifted because of improved conditions.

DATE: September 26, 1988.

ADDRESS: 101 S 23rd Street, Worland, WY 82401.

FOR FURTHER INFORMATION CONTACT: Steve Christy, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347-9871.

SUPPLEMENTARY INFORMATION: Extreme fire danger prompted the Bureau of Land Management in Worland to issue restrictions of certain activities for public lands in the Big Horn Basin. These extreme fire conditions no longer exist and the restrictions are being

removed. The following activities are now allowed on public lands in the Worland District:

- Using chain saws on public lands west of Wyoming Highway 120 is now allowed without a special permit.
- Building campfires is permitted as long as fires are attended at all times.
- All restrictions on smoking are removed.

Date: September 28, 1988.

Darrel C. Barnes,
District Manager.

[FR Doc. 88-23171 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-22-M

[CO-030-08-4410-08]

Availability of the Uncompahgre Basin Proposed Resource Management Plan and Final Environmental Impact Statement; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Uncompahgre Basin Proposed Resource Management Plan and Final Environmental Impact Statement and notice of four proposed areas for designation as Areas of Critical Environmental Concern (ACECs) and as either Research Natural Areas or Outstanding Natural Areas.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management has prepared the Uncompahgre Basin Proposed Resource Management Plan and Final Environmental Impact Statement for public lands in the Uncompahgre and North Fork of the Gunnison river valleys of western Colorado.

With the exception of the wilderness recommendations, this plan is protestable during a 30-day period as provided for in 43 CFR 1610.5-2. All protests must include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts being protested.

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.

A short concise statement explaining why the protesting party disagrees with

the BLM Colorado State Director's decision.

DATE: The protest period will end 30 days following notification of availability of this document by the Environmental Protection Agency in the Federal Register.

ADDRESS: Protests should be sent to: Director (760), Bureau of Land Management, Premier Building, Room 909, 1725 I Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Allen J. Belt, Area Manager, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, Colorado 81401, telephone 303-249-7791. Single copies of the document may also be obtained from this address.

SUPPLEMENTARY INFORMATION: The Uncompahgre Basin Planning Area is comprised of 483,077 acres of public land located in west-central Colorado. The Proposed Resource Management Plan is a refinement of the Preferred Alternative described in the Draft Uncompahgre Basin RMP/EIS of June 1987, with consideration given to public comment, further analysis, corrections, and rewording for clarification. The Proposed RMP provides a framework for managing and allocating public land and resources for at least the next ten years.

The Proposed RMP would continue multiple-use management by protecting important environmental values and sensitive resources while allowing development of resources which provide important goods and services.

The proposed RMP identifies four areas for designation as ACECs:

A 1,895-acre portion of Escalante Canyon located west of Delta, Colorado, would be designated as the Escalante Canyon Area of Critical Environmental Concern. Specifically, this area is located in T. 51 N., R. 13 W., sections 19, 20, 21, 22, 27, 28, 29, and 30, New Mexico Principal Meridian.

This area contains several federally-listed threatened and endangered plant species and two unique plant associations. The area also receives significant recreational use.

Threatened and endangered plant monitoring studies would be developed and habitat improvement activities initiated. Information signs identifying potential recreational hazards would be provided. Oil and gas leases would have a no surface occupancy stipulation, the area would be withdrawn from entry and location for locatable minerals, and all surface-disturbing activities would be restricted to protect and enhance listed and unique plant habitat.

An area comprised of two tracts totalling 377 acres located eight miles

east of Montrose, Colorado, would be designated as the Fairview Research Natural Area, an area of critical environmental concern. Specifically, this area is located in T. 49 N., R. 8 W., sections 18 and 19; T. 48 N., R. 8 W., section 6; and T. 48 N., R. 9 W., section 1, New Mexico Principal Meridian.

The tracts contain a large population of a listed endangered species and significant populations of a candidate species.

Plant monitoring studies would be developed in cooperation with the Colorado Natural Areas Program and actions designed to improve habitat conditions initiated. Oil and gas leases would have a no surface occupancy stipulation, the area would be withdrawn from entry and location for locatable minerals and all surface-disturbing activities would be restricted to protect and enhance endangered species habitats.

An 80-acre site located northeast of Crawford, Colorado, would be designated as the Needle Rock Outstanding Natural Area, an area of critical environmental concern. Specifically, this area is located in T. 15 S., R. 91 W., section 27, 6th Principal Meridian.

This site consists mainly of a volcanic geological structure with high-value scientific, interpretive, and scenic characteristics.

The area would be managed to protect the scientific and scenic qualities of this site. Oil and gas leases would contain a no surface occupancy stipulation, the area would remain withdrawn from entry and location for locatable minerals, and the area would be managed under VRM Class I guidelines.

A 6,783-acre area located approximately three miles northwest of Delta, Colorado, would be designated as the Adobe Badlands Outstanding Natural Area, an area of critical environmental concern. Specifically, this area is located in T. 14 S., R. 96 W., sections 8, 9, 10, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; and T. 15 S., R. 96 W., sections 2, 3, and 4, 6th Principal Meridian.

This area consists of Mancos shale hills and flats which, through wind and water erosion, have formed unique scenic formations. The area's soils are highly erodible and saline, resulting in high sediment loads and very saline runoff. The area also contains known and potential habitat for several endangered and threatened plant species.

The area would be managed to protect its unique scenic qualities, improve threatened and endangered species

habitat, and reduce active erosion. Oil and gas leases would contain a no surface occupancy stipulation; forage utilization would be limited if necessary to reduce erosion rates; and the area would be protected from surface-disturbing activities which would degrade scenic qualities or accelerate erosion.

No sooner than the end of the 30-day protest period, and following the consistency review by the Governor of Colorado, the Proposed Resource Management Plan, excluding any portions under protest or found inconsistent, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest.

Date: September 19, 1988.

Tom Walker,

Associate State Director.

[FR Doc. 88-22267 Filed 10-6-88; 8:45 am]

BILLING CODE 4310-JB-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 271X)]

CSX Transportation, Inc.; Abandonment Exemption of Railroad Line in Birmingham, AL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.9-mile line of railroad between mileposts ANJ-979.1 and ANJ-982.0, located in Birmingham, Jefferson County, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 6, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by October 17, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 27, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by October 12, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 27, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,
Acting Secretary.

[FR Doc. 88-23043 Filed 10-6-88; 8:45 am]

BILLING CODE 7035-01-M

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

² See *Exempt. of Rail Line Aband. or Discont.—Offers of Fin. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

[Docket No. AB-31 (Sub-No. 27X)]

The Grand Trunk Western Railroad Co.; Exemption; Abandonment in Henry County, OH

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by The Grand Trunk Western Railroad Company of 7.15 miles of rail line in Henry County, OH, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 6, 1988. Formal expressions of intent to file an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 17, 1988, petitions to stay must be filed by October 24, 1988, and petitions for reconsideration must be filed by November 1, 1988. Request for a public use condition must be filed by October 17, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-31 (Sub-No. 27X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Robert I. Shelling, Jr., Grand Trunk Western Railroad Company, 1333 Brewery Park Blvd., Detroit, MI 48207-2699.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD service (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: September 30, 1988.

By the Commission, Chairman Gradison,
Vice Chairman Andre, Commissioners
Simmons, Lamboley, and Phillips.

¹ See *Exempt. of Rail Line Aband. or Discont.—Offers of Fin. Assist.*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

Commissioner Lamboley commented with a separate expression.

Kathleene M. King,

Acting Secretary

[FR Doc. 88-23205 Filed 10-6-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Ampco Printing Corp.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on September 28, 1988, a proposed consent decree in *United States v. Ampco Printing Corporation*, 85 Civ. 4224 (S.D.N.Y.) was lodged with the United States District Court for the Southern District of New York. The proposed consent decree settles the United States' claims under the Clean Air Act against Ampco Printing Corporation (Ampco) for civil penalties and injunctive relief relating to visible emissions into the atmosphere from Ampco's lithographic printing plant in the Bronx, in violation of federally-enforceable New York regulations limiting the opacity of emissions.

The proposed consent decree requires Ampco to install, on a schedule set forth in the decree, catalytic incineration equipment that will abate the violations of opacity requirements and reduce emissions of volatile organic compounds which contribute to the formation of ozone. Ampco is also required to undertake a maintenance program to ensure the continued operation of the control equipment and to comply with the New York opacity regulations. The proposed decree provides for payment by Ampco of a \$25,000 civil penalty.

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, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Ampco Printing Corporation*, D.J. Ref. #90-5-2-1-822.

The proposed consent decree may be examined at the offices of the United States Attorney, One St. Andrew's Plaza, New York, NY 10007, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW.,

Washington, DC 20530. Copies 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 \$1.80 (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. 88-23129 Filed 10-6-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-14]

Carmel Ben-Eliezer, M.D.; Revocation of Registration

On February 2, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Carmel Ben-Eliezer, M.D., Respondent, of 210 Highlander Heights Drive, Glenshaw, Pennsylvania, proposing to revoke his DEA Certificate of Registration AB7911046, and to deny his pending application, executed on October 1, 1987, for renewal of his practitioner's registration under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held on January 15, 1988, in Washington, DC. Respondent was not permitted to testify at the administrative hearing, despite objection from Respondent's counsel, based upon his failure to comply with a prehearing ruling which ordered him to provide Government counsel with a summary of expected testimony and copies of documents to be introduced at the hearing. The Administrative Law Judge's prehearing ruling specifically warned that failure to comply would result in the exclusion of either testimony or documents.

On May 18, 1988, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that Respondent be permitted to retain his DEA Certificate of Registration, but not be permitted to handle Percocet, a Schedule II narcotic controlled

substance. Government counsel filed exceptions to the Administrative Law Judge's Opinion and recommended ruling, findings of fact and decision. Respondent's counsel did not file any response to the Government's exceptions.

On July 15, 1988, Judge Young transmitted the record of the proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and adopts, in part, the findings of fact recommended by the Administrative Law Judge, makes independent findings of his own and rejects all other findings, not included herein, as being unsupported by credible evidence. The Administrator also rejects the recommended ruling of the Administrative Law Judge. Pursuant to 21 CFR 1316.67, the Administrator issues his final order in the matter based upon findings of fact and conclusions of law as set forth below.

The Administrator finds that, while working in an undercover capacity in May 1985, Detective William Joyce of the Pittsburgh Police Department made arrangements to purchase Percocet tablets from an individual known as Victor De Francis. On May 29, 1985, Mr. De Francis informed Detective Joyce that his girlfriend, Michelle Prewitt, could obtain Percocet prescriptions from the Respondent in exchange for sexual favors. On that date, Detective Joyce met Mr. De Francis in a parking lot outside Respondent's office. Mr. De Francis told Detective Joyce that Ms. Prewitt was inside the office performing sexual favors for Respondent in exchange for a Percocet prescription. A short while later, Ms. Prewitt exited the building and entered a vehicle occupied by Detective Joyce and Mr. De Francis. She produced a prescription for 30 dosage units of Percocet tablets bearing Respondent's name and signature. Ms. Prewitt gave Respondent no legitimate reason to justify the issuance of the prescription. The three then drove to a local pharmacy and had the prescription filled. Detective Joyce paid Mr. De Francis \$75.00 for 20 of the Percocet tablets.

In September 1985, Mr. De Francis and Ms. Prewitt were arrested on charges of conspiracy to deliver, possession, and delivery of a controlled substance, to wit: Percocet. Their arrests were publicized in the local press. Mr. De Francis later was convicted on all three counts. After entering a plea of guilty, Ms. Prewitt was convicted of conspiracy and possession with intent to deliver a controlled substance in July 1986.

Following the entry of her plea to the criminal charges, but prior to her conviction, Ms. Prewitt was interviewed by Detective Joyce regarding her activities with Respondent. Ms. Prewitt was also interviewed by investigators from the Pennsylvania Attorney General's Medicaid Fraud Control Section, concerning an unrelated matter. The information Ms. Prewitt provided in that interview was the same she provided to Detective Joyce. Ms. Prewitt fully described her procedure for obtaining controlled substance prescriptions from Respondent. She stated that she first visited Respondent's medical office in March 1985 for treatment of a cold. On that date, he prescribed Ampicillin and Tussi-Organidin cough syrup. The following day, she complained that the cough syrup bothered her stomach. Respondent then called in a telephone prescription for Hycodan for her at a local pharmacy.

Following her initial visit, Ms. Prewitt returned to Respondent's office several times over the course of six months with various medical complaints. During some of her medical examinations, Respondent attached leads to an EKG machine below Ms. Prewitt's waist and on her breasts, a practice not in accordance with accepted medical procedures. Generally, Respondent would have her disrobe completely, regardless of her medical complaint. In addition, he would routinely perform breast examinations. He also would hold her face and comment about her beautiful eyes, hug her and caress other parts of her body. At one point, Respondent made comments to Ms. Prewitt that, as a medical practitioner, he could demonstrate various types of sexual acts which they could perform for the purpose of sexually stimulating her.

Ms. Prewitt also told Detective Joyce that, at her request, Respondent prescribed Preludin to her on one occasion after she claimed she wanted to lose a few pounds. Ms. Prewitt was not obese or significantly overweight at the time Respondent issued the prescription to her.

Ms. Prewitt later informed Mr. De Francis of Respondent's unusual actions and comments. Mr. De Francis, a drug abuser, then asked her to offer Respondent sexual favors in exchange for controlled substance prescriptions.

On May 10, 1985, Ms. Prewitt went to Respondent's office for the purpose of obtaining a prescription for Percocet. During previous visits, she had promised to meet Respondent at various hotels to have sex with him in exchange for prescriptions for drugs. On this

occasion, she stated that she may have told Respondent she needed Percocet for "back pain." Respondent informed her that he would issue the prescription only if she would perform oral sex on him in his office. Ms. Prewitt complied with Respondent's request and obtained a prescription for 30 dosage units of Percocet from him. Detective Joyce subsequently retrieved this prescription from a local pharmacy.

During her interview with Detective Joyce, Ms. Prewitt also related the events which occurred during her May 29, 1985, visit to Respondent's medical office. She stated that she returned to his medical office seeking to obtain a prescription for Percocet. She gave Respondent no legitimate medical reason requiring the issuance of a controlled substance prescription. After Ms. Prewitt requested the prescription, Respondent informed her that she again would have to perform sexual favors in exchange for the prescription. She complied with his request. Respondent wrote a prescription for 30 dosage units of Percocet for her only after she performed the specified sexual acts. The drugs obtained pursuant to that prescription were subsequently sold to Detective Joyce, as discussed earlier.

Subsequent to her arrest, on June 27, 1986, the Pittsburgh Police Department sent Ms. Prewitt to Respondent's medical office wearing an electronic transmitter, in an attempt to obtain additional controlled substance prescriptions from Respondent for other than a legitimate medical purpose and to have him admit to his past illicit activities with Ms. Prewitt. Although Respondent refused to provide Ms. Prewitt with controlled substance prescriptions in exchange for sexual favors, he admitted that he had done so in the past. He also admitted to her that he knew his previous activities were wrong.

As a result of Detective Joyce's investigation and the tape-recorded conversation between Respondent and Ms. Prewitt, on February 18, 1987, a two count criminal information was filed against Respondent in the Court of Common Pleas for Allegheny County, charging him with distribution of controlled substances by a practitioner in bad faith, in violation of section 13(a)(14) of the Pennsylvania Controlled Substance, Device and Cosmetic Act, 35 P.S. Section 780-113(a)(14), a felony offense relating to controlled substances. On January 18, 1988, Respondent was found guilty, following the conclusion of a bench trial, of one count of distribution of controlled substances by a practitioner in bad faith. Ms. Prewitt was among the

witnesses who testified against Respondent during the trial. Respondent has yet to be sentenced with respect to that offense.

The Administrator also takes note that on October 14, 1986, in the Pennsylvania Court of Common Pleas for Allegheny County, Respondent was convicted, after entering pleas of *nolo contendere*, on two felony counts of Medical Assistance Fraud, in violation of 62 Pa. C.S.A. 1407(a)(7). Respondent was placed on probation for a period of two years and was ordered to pay restitution and other expenses totalling \$2,164.00. The convictions stemmed from an investigation which revealed that Respondent had falsified numerous claims for reimbursement for medical services provided to several medical assistance patients.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's [or registrant's] conviction record under Federal or State laws relating to the manufacture, distributions, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

The evidence in this case relates primarily to either the second, fourth or fifth factor. In either case, the Administrator finds Respondent's experience in dispensing controlled substances to be overwhelmingly negative. The testimony and evidence presented at the hearing show that on at least three separate occasions, Respondent issued prescriptions to Ms. Prewitt for other than legitimate medical

purposes. On at least two of those occasions, Respondent's only motive for issuing the prescriptions was Ms. Prewitt's consent to perform specific sexual acts with him.

With respect to testimony regarding the instances in which Respondent prescribed controlled substances to Ms. Prewitt for other than legitimate medical purposes, the Administrative Law Judge discounted Ms. Prewitt's statements to the police officers, apparently feeling that the pendency of her sentencing on charges of conspiracy and unlawful possession of controlled substances in some way colored the truthfulness of her statements. The fact that this woman cooperated in order to improve her legal position alone, a sole independent evidence that her statements were less than truthful, is insufficient reason to disregard her statements. There is no indication whatsoever that Ms. Prewitt was anything less than a credible witness. Her statements were corroborated by statements she and Mr. De Francis made to Detective Joyce, while the detective was acting in an undercover capacity, prior to their arrest. She provided the same information to individuals investigating Respondent's fraudulent submission of claims for payment under the Pennsylvania Medicaid program. In addition, her testimony at Respondent's criminal trial for unlawful distribution of controlled substances did not differ from statements she made earlier. Therefore, the Administrator finds no reason to disregard or discount any of Ms. Prewitt's statements when evaluating Respondent's previous activities relating to controlled substances.

Based upon his interpretation of Ms. Prewitt's statements, the Administrative Law Judge found that there was a preponderance of evidence to support a finding that Respondent issued a Percocet prescription to Ms. Prewitt on May 29, 1985, for other than a legitimate medical purpose, but insufficient evidence to make the same finding with respect to the May 10, 1985, prescription. The Administrator strongly disagrees with the Administrative Law Judge's interpretation of the May 10, 1985, incident and finds that a preponderance of the credible evidence supports a conclusion that Respondent issued that prescription for other than a legitimate medical purpose. The record contains no evidence, whatsoever, showing that Respondent was then pursuing the legitimate medical treatment of Ms. Prewitt. Nor is there any indication that Ms. Prewitt was anything other than completely candid in her interviews with Detective Joyce and others. A

subsequent tape-recorded conversation between Ms. Prewitt and Respondent supports her statements that Respondent issued controlled substance prescriptions to her for other than legitimate medical purposes and in exchange for sexual favors. Even though Ms. Prewitt may have given Respondent a superficially valid reason for prescribing Percocet during that visit, the Administrator finds that the fact that Respondent demanded sexual favors before issuing the prescription and that he later admitted that what he had done before was wrong, negated any semblance of legitimacy in his prescribing of controlled substances to Ms. Prewitt on that date.

The Administrative Law Judge made no mention of Respondent's prescribing Preludin to Ms. Prewitt. The Administrator finds that Respondent's prescribing of Preludin to Ms. Prewitt for weight loss was also for other than legitimate medical purposes. No evidence was presented at the administrative hearing which rebutted Ms. Prewitt's statements that Respondent had provided her with a Preludin prescription. Preludin, is a relatively dangerous and highly abused stimulant, similar to amphetamine, which should only be prescribed for weight loss to patients suffering from exogenous obesity, and then only in conjunction with other forms of treatment. The evidence presented at the administrative hearing indicates that Ms. Prewitt was neither obese nor even significantly overweight. There is no evidence that Respondent was actively treating obesity and there was no evidence presented to justify Respondent's prescribing of this drug. The Administrator concludes that Respondent prescribed Preludin for Ms. Prewitt because she requested it and because she complied with his less than orthodox medical examinations.

The Administrative Law Judge gave little weight to Respondent's convictions for fraudulent submission of claims for payment under the Pennsylvania Medicaid program stating that Respondent's convictions were only of "incidental concern" to the Administrator. The Administrator disagrees. While Respondent's Medicaid fraud convictions do not directly relate to his ability to handle controlled substances and cannot provide the sole basis for the revocation of his registration, they are rightfully considered in this proceeding. Such convictions, when viewed with Respondent's other unlawful controlled substance prescribing practices illustrate his disregard for the laws

governing medical practice and his violation of the public trust.

In his opinion, the Administrative Law Judge recommended that Respondent be permitted to retain his Federal controlled substance privileges despite his proven history of wrongful handling activities. His opinion appears to be based, in part, upon Respondent's refusal to issue a controlled substance prescription to Ms. Prewitt during the police undercover operation on June 27, 1986. The Administrator is not convinced that Respondent's refusal to issue the prescription on that occasion was motivated by his acknowledgment of the wrongful nature of his past activities with Ms. Prewitt. The evidence presented indicated that Ms. Prewitt's arrest for conspiracy, possession and distribution of controlled substances was publicized in the local press prior to her return to his office. In addition, Ms. Prewitt had not seen Respondent for several months prior to the June 27, 1986, visit. Thus, Ms. Prewitt's sudden reappearance, several months after her arrest, was likely to have raised his suspicions about the motive for her visit. Although the evidence does not permit the Administrator to make a clear determination regarding Respondent's motivation for refusing to prescribe additional controlled substances to Ms. Prewitt, he is not convinced that such refusal was based solely upon Respondent's efforts to redeem himself.

With respect to an appropriate sanction in this matter, the Administrative Law Judge stated the following:

Based upon the wrongdoing clearly established by the proponderance of the evidence the Administrative Law Judge concludes that total revocation of registration is unnecessary and would be unduly harsh in this case. The Controlled Substances Act specifically provides that the Administrator may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist. 21 U.S.C. 824(b). The Administrative Law Judge concludes that this provision would be appropriately applied in this case.

Thus, the Administrative Law Judge recommended that Respondent's registration be revoked with respect to one drug only, Percocet.

The Administrator cannot accept this recommendation. In the first place, the recommended sanction would be nugatory. Percocet, is a brand name for a Schedule II narcotic preparation containing oxycodone and acetaminophen. Thus, were the Administrative Law Judge's recommendation adopted, Respondent

would be free to use the generic form of the drug, but not the brand name product. Furthermore, the recommended sanction is inappropriate. This case does not involve a physician who has found himself unable to refrain from the abuse of a particular drug. In such a case, a preventive sanction like that recommended by the Administrative Law Judge might be appropriate. Again, this is not such a case.

The Administrator finds that Respondent abused his registration. He prescribed controlled substances for other than legitimate medical purposes. He prescribed the drugs requested by Ms. Prewitt not to treat a medical condition, but to further his objective of mishandling her body and ultimately engaging in sex with her. In doing so, Respondent abandoned the responsibilities which the law imposes on registrants and the trust which society places in those in whose hands we place our health and very lives. He also betrayed a public trust by fraudulently making Medicaid claims. He was convicted of those crimes. There is no credible evidence of rehabilitation. Respondent's past experience in handling controlled substances is not that of a physician who has demonstrated professional judgment and restraint. Quite the contrary, this registrant's past experience leads the Administrator to conclude that Respondent cannot be entrusted with the responsibilities of a DEA registration and that his continued possession of a registration would be contrary to the public interest. Therefore, the Administrator concludes that Respondent's registration must be revoked and that his pending application for renewal thereof must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AB7911046, previously issued to Carmel Ben-Eliezer, M.D., be, and it hereby is, revoked. He further orders that the pending application for renewal of said registration, executed on October 1, 1987, be, and it hereby is, denied.

This order is effective November 7, 1988.

John C. Lawn,
Administrator.

Dated: October 3, 1988.

[FR Doc 88-23127 Filed 10-6-88; 8:45 am]

BILLING CODE 4410-09-M

North American Medical, Inc.; Denial of Application for Registration

On July 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to North American Medical, Inc., located at 4025 NW 3rd Street, Oklahoma City, Oklahoma, proposing to deny its pending new application, executed on March 5, 1987, for registration as a distributor of Schedule III, IV and V controlled substances, pursuant to 21 U.S.C. 823(e), on the ground that the registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(e) and 824(a)(4).

The Order to Show Cause was sent to North American Medical, Inc., at the address listed on its application for registration, but was returned unclaimed on August 5, 1988. A copy of the Order to Show Cause was also sent to counsel for North American Medical, Inc. The return-receipt indicates that the copy was received by counsel on July 21, 1988. By letter dated July 14, 1988, counsel for North American Medical, Inc. attempted to withdraw the company's application for registration. No other correspondence has been received from counsel indicating that North American Medical, Inc. desired a hearing on the issues raised in the Order to Show Cause. With respect to counsel's request to withdraw the pending application for registration of North American Medical, Inc., the Administrator takes note that the company was given several opportunities to voluntarily withdraw its application for registration as early as April 1987, and as recent as June 13, 1988. In the most recent request, the Government informed the company that if it did not voluntarily withdraw the pending application by June 28, 1988, administrative proceedings would be initiated to deny the application. In each instance, the company either refused to withdraw the pending application or did not respond to the requests. It was not until the Order to Show Cause was issued that the company chose to withdraw the application. The Administrator finds that since proceedings to deny the pending application for registration already have been initiated, the company cannot unilaterally terminate the action by withdrawing its application. 21 CFR 1301.33(a). See *Park and King Pharmacy*, Docket No. 86-6, 52 FR 13136 (1987). Therefore, the Administrator concludes that North American Medical, Inc. has waived its opportunity for a hearing on the issues raised in the Order

to Show Cause. Pursuant to 21 CFR 1301.54(d) and 1301.54(e), the Administrator enters this final order based upon the record of this proceeding as it now appears and the DEA investigative file in the matter.

The Administrator finds that on March 3, 1987, the DEA Dallas Field Division concluded a scheduled regulatory investigation of North American Medical, Inc., Northwest Medical Systems, Inc. (the predecessor to North American Medical, Inc.), and Hospital Shared Services, Inc. (a subsidiary of North American Medical, Inc.), all located in Enid, Oklahoma, under previously issued DEA distributor registrations which have since been surrendered. The investigation revealed that the companies failed to maintain controlled substance records and reports in compliance with Federal laws and regulations. The companies could not account for the purchase and sale of certain controlled substances, and the records of all three registrants were commingled making it difficult, if not impossible, to determine which registrant was responsible for particular controlled substances purchases and sales. The investigation also revealed that the controlled substance records for each registrant were not readily retrievable, and that all of the required records were not furnished to DEA Diversion Investigators during the course of the investigation. In addition, the registrants failed to conduct biennial inventories of controlled substance stock and failed to comply with ARCOS excessive purchase reporting requirements. Controlled substance records were also maintained at a location in Oklahoma City, although the companies were not permitted to maintain records at any other site than their registered locations. Finally, the investigation revealed that the proposed site for North American Medical, Inc., in Oklahoma City, for which the pending application for registration was filed, was not in substantial compliance with Federal security requirements for controlled substance distributors.

Based upon the investigation described above, the Administrator determines that North American Medical, Inc. has failed to comply with Federal laws and regulations relating to the handling, recordkeeping, reporting, and security of controlled substances. Compliance with such laws and regulations is essential to assure that adequate control is maintained to prevent the diversion of controlled substances from legitimate channels.

The Administrator further finds that on August 4, 1987, counsel for North

American Medical, Inc. submitted correspondence to the Oklahoma State Board of Pharmacy (OSBP) advising the Board that the company had elected not to renew its state controlled substance license. Therefore, the company was no longer authorized by the State of Oklahoma to handle controlled substances. Since the Drug Enforcement Administration does not have statutory authority to issue a DEA Certificate of Registration to an applicant who is not duly authorized to handle controlled substances in the state in which he seeks to become registered, a DEA Certificate of Registration could not be issued to North American Medical, Inc., pursuant to its pending application for registration. See 21 U.S.C. 823(e) and 824(a)(3).

The Administrator also notes that on January 25, 1988, in the United States District Court for the Western District of Oklahoma, Robert P. Fails, President of North American Medical, Inc., and Jerry G. Stewart, Vice President of North American Medical, Inc., were each convicted of 27 felony counts of violating 18 U.S.C. 1341 (devising a scheme to defraud and use of U.S. Mail to defraud), two counts of violating 18 U.S.C. 1343 (using a telephone in interstate commerce to execute a scheme to defraud), and one count of violating 18 U.S.C. 371 (conspiracy to defraud). Mr. Stewart was sentenced to three years imprisonment and was fined a sum of \$100,000.00. Mr. Fails was sentenced to eighteen months imprisonment and was fined a sum of \$1,500.00. The convictions resulted from a scheme in which they purchased large quantities of pharmaceutical drugs through Hospital Shared Services, Inc., allegedly for hospital, governmental or charitable purposes only, and unlawfully resold the drugs to others for significant profits. Although the illegal activities in which Messrs. Fails and Stewart participated did not involve controlled substances, as officers of North American Medical, Inc., they have proven through their criminal convictions that they are not trustworthy. They chose to use their companies to profit from a criminal scheme involving pharmaceutical drugs. The Administrator concludes, based upon their demonstrated greed and avarice, that Messrs. Fails and Stewart would not be any more trustworthy in their handling of controlled substances. Both have displayed a blatant disregard for the law. These activities, and the past experience of their predecessor companies, clearly warrant the denial of their pending application for registration on the ground that such registration

would be inconsistent with the public interest.

Therefore, based upon findings that North American Medical, Inc. is not currently authorized to handle controlled substances in the State of Oklahoma, that it has a history of non-compliance with Federal laws and regulations relating to controlled substances, that two of its corporate officers have been convicted of felony offenses relating to pharmaceutical drugs, and that registration of this firm would be contrary to the public interest, the Administrator concludes that the application for registration submitted by North American Medical, Inc. must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration (DEA), pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the pending new application for registration, executed by North American Medical, Inc. on March 5, 1987, be, and it hereby is, denied.

This order is effective October 7, 1988.

John C. Lawn,
Administrator.

Dated: October 3, 1988.

[FR Doc. 88-23126 Filed 10-6-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal

statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue NW., Room S-3504,
Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the *Federal Register* are in parentheses following the decisions being modified.

Volume I	Page Nos.
Delaware: DE 88-2 (January 8, 1988).....	95
New York:	
NY88-3 (January 8, 1988).....	702
NY88-9 (January 8, 1988).....	768
Pennsylvania:	
PA88-2 (January 8, 1988).....	852-853, 855
PA88-5 (January 8, 1988).....	880-883
PA88-6 (January 8, 1988).....	894-900d
Volume II	
Illinois: IL88-14 (January 8, 1988).....	184-187
Volume III	
Montana: MT88-1 (January 8, 1988).....	168-169, 171

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20420 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30th Day of September 1988.

Alan L. Moss,

Director, Division of Wage Determinations.
[FR Doc. 88-22966 Filed 10-6-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-114-C]

Timco Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Timco Energy, Inc., Drawer 1030, Bluefield, Virginia 24605 has filed a petition to modify the application of 30 CFR 75.312 (air passing through abandoned, inaccessible, or robbed area) to its No. 2 Mine (I.D. No. 46-07164) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection not be used to ventilate any working place.

2. As an alternate method, petitioner proposes to use air that has passed through the 1st left section to ventilate the active section. This area of the mine is unsafe to travel and cannot be examined.

3. In support of this request, petitioner states that—

- (a) The mine is located above the water table;
- (b) The area has not cut into any old works or abandoned areas; and
- (c) Preshift examinations would be made daily in the intake aircourse entering the active section.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 7, 1988. Copies of the petition are available for inspection at that address.

Date: October 3, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-23237 Filed 10-6-88; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

Duke Power Co. et al., Catawba Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Duke Power Company (the licensee) for the Catawba Nuclear Station, Units 1 and 2, located at the licensee's site in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because

insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of

resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II.

[FR Doc. 88-23184 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co., McGuire Nuclear Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Duke Power Company (the licensee) for the McGuire Nuclear Station, Units 1 and 2, located at the licensee's site in Mecklenburg County, North Carolina.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance

proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for the Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate

and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte, (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II.

[FR Doc. 88-23196 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co., Oconee Nuclear Station, Units 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Duke Power Company (the licensee) for the Oconee Nuclear Station, Units 1, 2, and 3, located at the licensee's site in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 3rd day of October 1988.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects-I/II.

[FR Doc. 88-23193 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

**Georgia Power Co. et al.;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia (the licensee) for the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located at the licensee's site in Appling County, Georgia.

Environmental Assessment*Identification of Proposed Action*

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an

independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required by the rule. In response to these comments and related petitions-for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance

language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II.

[FR Doc. 23192 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

**Georgia Power Co. et al.;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(w)(5)(i) to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee) for the Vogtle Electric Generating Plant, Unit 1, located at the licensee's site in Burke County, Georgia.

Environmental Assessment*Identification of Proposed Action*

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disperse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be effective by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Need for The Proposed Action

The exemption is needed because insurance complying with requirements of 10 CFR 50.54(w)(5)(i) is unavailable and because the temporary delay in

implementation allowed by the exemption and associated rulemaking action will permit the Commission to reconsider on its merits the trusteeship provision of 10 CFR 50.54(w)(4).

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage already is prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further information concerning this action, see the proposed rule (53 FR 36338), and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects-1/II.

[FR Doc. 23194 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

**Long Island Lighting Co.; Correction to
Environmental Assessment and
Finding of No Significant Impact**

On October 3, 1988, the *Federal Register* published the Environmental Assessment and Finding of No Significant Impact Concerning Exemption From 10 CFR 50.54(w)(5)(i) for the Shoreham Nuclear Power Station. A correction needs to be made to that notice.

The first paragraph under the Section entitled, Environmental Impacts of the Proposed Action, should read:

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of licensed facilities. Further, as noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee is required to carry at least \$337 million insurance. Because Shoreham Nuclear Power Station (SNPS) is operating at less than five percent, the licensee has been exempted from carrying \$1.06 billion until such time as an authorization to

operate SNPS at power levels greater than five percent is granted (53 FR 21955, June 10, 1988). This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. In addition, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

Dated at Rockville, Maryland, this 29th day of September 1988.

For the Nuclear Regulatory Commission.

George Rivenbark,

Acting Director, Project Directorate I-2,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.

[FR Doc. 88-23195 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-364 and 50-348]

**Alabama Power Co., Joseph M. Farley
Nuclear Plant, Units 1 and 2;
Exemption**

I

Alabama Power Company (the licensee), is the holder of Facility Operating License Nos. NPF-2 and NPF-8, which authorize operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensee's site located in Houston County near Dothan, Alabama.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer

nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * *

Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial

cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Alabama Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38114).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23190 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72-3 (50-261)]

**Carolina Power and Light Co.;
Issuance of Amendment to Materials
License SNM-2502**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to Materials License No. SNM-2502 held by the

Carolina Power and Light Company for the receipt and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation, located on the H.B. Robinson Steam Electric Plant Unit No. 2 site, Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications concerning removable contamination limits on the storage canister and associated surveillance requirements to assure that the limits are not exceeded. It also revises Technical Specifications concerning operating limits for pressure and water content in connection with canister drying procedures. Administrative changes have been made throughout the license to reflect a recent change to 10 CFR Part 72 (53 FR 31651). These revisions do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated September 9, 1988, and (2) Amendment No. 3 to Materials License No. SNM-2502, and (3) the Commission's letter to the licensee dated September 30, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Local Public Document Room at the Hartsville Memorial Library, 220 N. Fifth Street, Hartsville, South Carolina 29550.

Dated at Silver Spring, Maryland, this 30th day of September 1988.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 88-23185 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-400]

**Carolina Power & Light Co. et al.,
Shearon Harris Nuclear Power Plant,
Unit 1; Exemption**

I

Carolina Power & Light Company (the licensee), is the holder of Facility Operating License No. NPF-63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Wake and Chatham Counties, North Carolina.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own

initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special

circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

Carolina Power & Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38117).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September, 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,

Director, Division of Reactor Project I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23187 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Company et al., Brunswick Steam Electric Plant, Units 1 and 2; Exemption

I

Carolina Power & Light Company (the licensee), is the holder of Facility Operating License Nos. DPR-71 and DPR-62, which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling water reactors at the licensee's site located in Brunswick County, North Carolina.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer

nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36336, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * *

Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial

cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) A temporary exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

Carolina Power & Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38115).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1988.

For the Nuclear Regulatory Commission,

Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23188 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co. et al., H.B. Robinson Steam Electric Plant, Unit No. 2; Exemption

I

Carolina Power & Light Company (the licensee), is the holder of Facility Operating License No. DPR-23, which

authorizes operation of the H.B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Darlington County, South Carolina.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by an interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special

circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) A temporary exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

Carolina Power & Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the

licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38116).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23189 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association, Grand Gulf Nuclear Station, Unit 1; Exemption

I

System Energy Resources, Inc., et al., (the licensee), is the holder of Facility Operating License No. NPF-29, which authorizes operation of the Grand Gulf Nuclear Station, Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Claiborne County, Mississippi.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has

proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally,

there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) A temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

System Energy Resources, Inc. is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38123).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.
[FR Doc. 88-23186 Filed 10-6-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co., South Carolina Public Service Authority, Virgil C. Summer Nuclear Station, Unit No. 1, Exemption

I

South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees), are the holders of Facility Operating License No. NFP-12, which authorizes operation of the Virgil C. Summer Nuclear Station, Unit No. 1. The license provides, among other things, that the licensees are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Fairfield County, South Carolina.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee

has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) A temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

South Carolina Electric & Gas Company and South Carolina Public Service Authority are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensees shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the

granting of this exemption will not result in any significant environmental impact (53 FR 38126).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23191 Filed 10-6-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-18698]

Application and Opportunity for Hearing; The Goodyear Tire and Rubber Co.

October 4, 1988.

Notice is hereby given that The Goodyear Tire & Rubber Company (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Manufacturers Hanover Trust Company (the "Bank") under indentures dated as of September 30, 1970 (the "1970 Indenture") and September 15, 1972 (the "1972 Indenture") between Company and Bank which were heretofore qualified under the Act and under an indenture dated July 7, 1988 (the "1988 Indenture") between Company and Bank which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company Alleges:

(1) Pursuant to the 1970 Indenture, the Company issued \$150,000,000 aggregate principal amount of its 8.60% Sinking

Fund Debentures and pursuant to the 1972 Indenture, the Company has issued \$150,000,000 aggregate principal amount of its 7.35% Sinking Fund Debentures (the "Debt Securities"). The Debt Securities were registered under the Securities Act of 1933 (the "1933 Act") and the 1970 and 1972 Indentures were qualified under the Act.

(2) Pursuant to the 1988 Indenture, the Company has issued \$150,000,000 aggregate principal amount of its 6 7/8% Convertible Debentures Due 2003 (the "Notes"). The Notes have not been registered under the 1933 Act and the 1988 Indenture has not been qualified under the Act on the basis that the Notes will not be offered or sold directly or indirectly in the United States of America or to or for the account of any citizen, national or resident thereof or other United States person or any corporation or other entity organized under or governed by the laws thereof (other than Notes sold, subject to certain restrictions, to branches of United States banks located outside of the United States and to certain institutional investors located in the United States).

(3) The Company is not in default under the 1970 Indenture, the 1972 Indenture and the 1988 Indenture. The Company's obligations under the 1970 Indenture, the 1972 Indenture and the 1988 Indenture are wholly unsecured and rank equally *pari passu*.

(4) The provisions of the 1970 Indenture, the 1972 Indenture and the 1988 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-18698, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, no later than October 31, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission,

450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23242 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26147; File No. SR-AMEX-88-16]

**Self-Regulatory Organizations;
American Stock Exchange, Inc.; Order
Approving Proposed Rule Change
Relating to the Trading of Options on
Stocks Listed on the American Stock
Exchange**

On June 23, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the Exchange to trade options on stocks it lists. Specifically, with the addition of another trading room, the Amex proposes to trade stocks and options thereon in physically separated locations.³

The proposed rule change was noticed in Securities Exchange Act Release No. 25958 (August 2, 1988), 53 FR 29975 (August 9, 1988). No comments were received on the proposed rule change.

The purpose of the proposed rule change is to permit the Exchange to trade options on stocks it lists. With the expansion of its trading facility, specifically the addition of a separate trading room, the Amex is in a position to trade stocks and options thereon in physically separated locations. The proposed rule change specifies that such trading shall take place at different trading locations and provides the safeguards necessary to prevent abuses which could result from the trading of stocks and related options in physical proximity to each other. Specifically, the

proposal prohibits an equity specialist from acting as a specialist or registered options trader ("ROT") in a class of stock options on a stock in which he is registered in the primary market therefore.⁴ In addition, odd-lot dealers and NASDAQ market-makers are prohibited from acting as ROTs in a class of stock options for which they are registered in the primary market therefor.⁵ Finally, a ROT who is also a registered trader in the stock underlying the option is prohibited from executing proprietary transactions in his option account within one hour of his having been in the designated stock trading area where the related security is traded.⁶ These restrictions are identical to those imposed on New York Stock Exchange, Inc. ("NYSE") members when the NYSE was approved to trade options on NYSE-listed stocks.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 Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it promotes just and equitable principles of trade. The Commission also believes that the Amex has proposed adequate safeguards to ensure that concerns regarding manipulation and market information abuses by Amex members, which could result from the Amex trading options and stocks underlying those options in physical proximity to each other, are minimal. In particular, by restricting the ability of jointly registered equity and option traders from entering options transactions for one hour after leaving the equity floor, the Commission believes the proposal adequately limits the ability of those members to use unfairly any material, non-public information they might possess.⁹ Moreover, the Commission

⁴ See proposed Amex Rules 175(c) and 958(e).

⁵ See proposed Amex Rule 958(e). If an odd-lot dealer or NASDAQ market-maker were to be an options specialist, however, the firm would first have to establish specific Chinese Wall procedures that are designed to prevent the flow of material, non-public market or corporate information from one entity to another affiliated entity and obtain Exchange approval pursuant to Amex Rule 193.

⁶ See proposed Amex Rule 958(f).

⁷ See NYSE Rules 750.80(a) and 758(a) and (b); Securities and Exchange Release No. 21759 (February 14, 1985).

⁸ 15 U.S.C. 78f (1982).

⁹ The Amex has not, however, indicated how it will specifically monitor compliance with this requirement. Accordingly, the Commission is conditioning this approval pending submission of an adequate surveillance procedure to ensure compliance with this prohibition.

notes that the Amex's existing surveillance procedures generally are adequate to identify and deter potential manipulations and other trading abuses.¹⁰ Finally, the Commission finds that the proposed rule change enhances competition amongst the options exchanges because it increases the number of stocks which are eligible for options trading on the Amex, thereby providing the Amex with more flexibility to choose the stocks which the Exchange believes are the most desirable for options trading, in furtherance of sections 6(b)(5) and (8) of the Act.¹¹

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-AMEX-88-16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,
Secretary.

Dated: October 3, 1988.

[FR Doc. 88-23167 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26154; File No. 600-21]

**Self-Regulatory Organizations;
Intermarket Clearing Corporation;
Order Granting Temporary
Registration as a Clearing Agency**

On October 6 1988, the Intermarket Clearing Corporation ("ICC") filed an application under section 19(a) of the Securities Exchange Act of 1934 ("Act"),¹ for temporary registration as a

¹⁰ Historically, the options surveillance programs of the self-regulatory organizations and the Commission have focussed on detecting individuals with material, non-public information about a stock seeking to use that information to profit on a leveraged basis by trading options, not the reverse. Although the possibility exists that transactions in the options market could materially influence the price of the underlying stock, options trading experience does not suggest that such opportunities are so frequent or so significant that reliance on a prophylactic measure, as opposed to on-going surveillance efforts, is needed to address this concern.

¹¹ In addition to the restrictions placed on Amex members discussed above, the Commission's approval of the rule change is premised on the belief that the Amex's trading floors for equities and options on those equities are sufficiently separated such that there is no time and place advantage derived from the physical proximity of the two floors which could be exploited by Amex members. Thus, any decision by the Amex to change the location of the options trading floor relative to the stock trading floor, or to modify the means of access between them, would require submission of a proposed rule change under section 19(b) of the Act.

¹² 15 U.S.C. 78s(b)(2) (1982).

¹³ 17 CFR 200.30-3(a)(12) (1986).

¹ 15 U.S.C. 78s(a) (1988).

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1987).

³ As such, the rule filing does not involve any side-by-side trading or integrated-marketmaking issues. Also, this rule change only makes the Amex eligible to trade options on Exchange-listed stocks; the Amex must still participate in the Option Allocation Plan to obtain the right to list options on Amex-listed securities.

clearing agency under section 17A of the Act² and Rule 17Ab2-1(c)³ thereunder. Rule 17Ab2-1 authorizes the Commission to grant temporary registration for a period of 18 months, while exempting ICC from complying with one or more of the statutory standards contained in section 17A(b)(3) of the Act. Notice of ICC's application was published in the *Federal Register* on November 21, 1986.⁴ No comments were received.⁵ This Order grants ICC's temporary registration for 18 months and partially exempt ICC from section 17A(b)(3)(B) of the Act.

I. Overview

ICC is the commodity clearing subsidiary of OCC.⁶ ICC, which commenced operations in 1985,⁷ guarantees, clears, and settles futures, options on futures, and commodity options transactions traded on the New York Futures Exchange, the Amex Commodities Corporation, and the Philadelphia Board of Trade.⁸ ICC, as a commodities clearing organization, is subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC").⁹ ICC is registering as a clearing agency with the Commission, because it would hold and control securities options positions contained in member proprietary accounts in connection with its cross-margining service.

In addition to clearing commodity transactions, ICC provides "cross-netting" services for firms engaged in both commodities and securities

trading.¹⁰ Cross-netting permits members of both OCC and ICC ("Joint Clearing Members") to combine OCC foreign currency option settlement obligations with ICC foreign currency futures settlements to arrive at a combined net settlement obligation. The Commission believes that ICC's cross-netting service is designed to facilitate the settlement of intermarket transactions and reduce member costs. ICC also intends to provide "cross-margining," under which ICC would calculate and collect margin on proprietary portfolios involving futures products cleared by ICC and securities options products cleared by OCC.

II. Statutory Standards

Section 17A of the Act requires a clearing agency, as defined in section 3(a)(23) of the Act and subject to certain exceptions, to register with the Commission.¹¹ ICC, in providing cross-margining services, falls within the section 3(a)(23) definition of a clearing agency and therefore is required to register with the Commission.¹²

Subparagraphs (A) through (i) of section 16A(b)(3) of the Act set forth specific determinations the Commission must make in granting registration. The Commission has published clearing agency registration standards ("Standards") that provide additional guidelines concerning the Division of Market Regulation's ("Division") interpretation of subparagraphs (A) through (I).¹³ Specific references to the

Standards appear below in applicable sections of the Commission's discussion.¹⁴

Rule 17Ab2-1(c) permits the Commission to grant a clearing agency temporary registration and exempt the registrant from one or more of the requirements under subparagraphs (A) through (I) of section 17A(b)(3). ICC has applied for temporary registration and has asked for an exemption from section 17A(c)(3)(B). During the temporary registration period, the applicant is, for all purposes under the Act, a registered clearing agency.

III. Discussion

A. Scope of the Order

This Order concerns the temporary registration of ICC as a clearing agency under section 17A of the Act for a period of 18 months. The determinations made in this Order reflect a review of ICC's by-laws, rules, procedures, and all other aspects of its operations contained in ICC's application. The Commission expects to review its determinations within 18 months to consider whether to grant ICC full registration as a clearing agency. During that time, the Commission will monitor and oversee ICC's operations through review of proposed rule changes,¹⁵ notices to

¹⁴ The Commission notes that the Standards were developed in the context of registration of 10 clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and to a lesser extent, municipal securities. The Commission recognizes that some of the Standards may not be appropriate for a futures clearing organization providing cross-margining services. Accordingly, the Commission intends to apply the Division Standards flexibly and on a case-by-case basis. In addition, the Standards allow clearing agencies to submit reasons why a particular Standard may be inappropriate and to suggest alternatives that are consistent with the Act.

¹⁵ Section 19(b) of the Act and Rule 19b-4 thereunder (17 CFR 240.19b-4(1988)) require a registered clearing agency to file for review all proposed rule changes, including changes to its by-laws, rules, and procedures. Because ICC will function as both a futures clearing corporation and a securities clearing corporation, some of its proposed rule changes may relate primarily to its futures clearing activities, although due to the presence of cross-margining even those rule changes may affect securities clearing activities. Accordingly, the Commission believes it would be appropriate for ICC to file proposed rule changes which primarily relate to its futures clearing corporation activities and do not otherwise concern the clearance and settlement of securities positions and the safeguarding of securities and related funds under section 19(b)(3)(A) of the Act, so long as those filings contain a *Federal Register* notice prepared by ICC.

² 15 U.S.C. 78q-1 (1988).

³ 17 CFR 240.17Ab2-1(c) (1988).

⁴ Securities Exchange Act Release No. 23718 (November 21, 1986), 51 FR 42154.

⁵ However, in making its determination, the Commission has reviewed comments submitted to both the Commission and the Commodity Futures Trading Commission ("CFTC") regarding the cross-margining service to be provided by ICC and the Options Clearing Corporation ("OCC").

⁶ OCC is registered with the Commission as a clearing agency. See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 5167 ("Full Registration Order"). For 13 years, OCC has issued, cleared, and settled all standardized options traded on securities exchanges or quoted on NASDAQ facilities. As discussed in detail *infra*, ICC and OCC have an agreement under which OCC provides services and facilities for ICC's clearing operation. ICC maintains its clearing fund contributions, clearing member margin deposits, and its books and records separate from those of OCC. ICC has its own membership admission criteria and financial requirements and is funded separately from OCC through its own fee structure. ICC also has its own Board of Directors and officers.

⁷ See Securities Exchange Act Release No. 21706 (February 4, 1985), 50 FR 53531.

⁸ ICC currently has 50 clearing members.

⁹ See 17 CFR 1.41 (1987), and *Board of Trade Clearing Corp. v. United States*, Comm. Fut. L. Rep. (CCH) ¶20,246 at 21,335 (D.C.D.C. 1976).

¹⁰ For a more detailed description of cross-netting, see Securities Exchange Act Release No. 24781 (August 6, 1987), 52 FR 30268, in which the Commission approved OCC's cross-netting proposal.

¹¹ The term "clearing agency" is defined, in pertinent part, as "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." See 15 U.S.C. 78c(a)(23) (1988).

¹² The staff of the Commission issued a no-action letter to ICC to enable it to provide cross-netting in the absence of registration for a period of one year. See Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Michael Weiner, Vice President/Deputy General Counsel, OCC, dated August 6, 1987. Recently, the Division extended that no-action position to the date on which ICC's application for temporary registration as a clearing agency is approved by the Commission. See Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to George Hender, President, ICC, dated September 14, 1988.

¹³ Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

members,¹⁶ and disciplinary actions.¹⁷ The Commission staff also plans to inspect ICC facilities during the temporary registration period.

In considering whether to grant ICC full registration as a clearing agency, the Commission also will monitor closely ICC's performance in providing cross-margining services. Eight months from the date ICC's temporary registration becomes effective, ICC will file with the Commission a report¹⁸ detailing (1) the number of ICC members using cross-margining, (2) the extent of their use, (3) significant samples illustrating the effects of that use on margin and aggregate clearing fund requirements, (4) the effect on cash flow (*i.e.*, a comparison of variation settlement requirements with margin reductions due to cross-margining), and (5) a description of the circumstances surrounding any instance in which a member holding cross-margined positions defaults in its obligations and the steps taken by ICC in response. ICC also will provide such data following any case of high market volatility¹⁹ in a

cross-margined product. Furthermore, ICC will provide additional related data as the Commission might from time to time request, such as samples illustrating the short-term stability of product group price correlation during periods high volatility.²⁰

B. Capacity To Promote Prompt and Accurate Clearance and Settlement

ICC plans to hold and control securities options positions in connection with its cross-margining proposal. Section 17A(b)(3)(A) of the Act requires that a clearing agency have the capacity to promote prompt and accurate clearance and settlement of securities for which it is responsible. As discussed in detail below, the Commission believes ICC has such capacity, based upon the Commission's review of the structure and potential benefits of ICC's cross-margining proposal and the Commission's experience with OCC, ICC's facilities manager.

The Report of the Presidential Task Force on Market Mechanisms (the so-called "Brady Report")²¹ recommended unification of mechanisms for the clearance and settlement of securities and futures transactions. According to the Brady Report, "the complexity and fragmentation of separate clearing mechanisms in securities and futures—in conjunction with massive volume, violent price volatility, and staggering demands on bank credit—brought the financial system to the brink during the week of October 19, 1987."²² In particular, the Brady Report noted that the absence of an effective cross-margining system for futures and securities options markets contributed to payment strains in October 1987. Accordingly, the Brady Report specifically recommended that cross-margining be allowed, permitting market participants with an investment in

futures to receive credit for a hedged investment in stocks or options.²³

The Commission believes, and the Brady Report and *Interim Report of The Working Group on Financial Markets* ("Working Group Report")²⁴ support our belief, that ICC's registration as a clearing agency and the implementation of cross-margining is consistent with the development of integrated clearing mechanisms.²⁵ Absent cross-margining, each leg of many intermarket positions must be carried with a different clearing organization. Each clearing organization controls only one leg of cross-market positions and margins that leg as if the other risk-reducing leg did not exist. Cross-margining is designed to provide a clearing organization with centralized management over both legs of an intermarket position and the ability to assess accurately the risk posed by that position. Benefits derived from cross-margining, as discussed below, could address many of the intermarket pressures faced by clearing organizations and their members during the market break.

Under cross-margining,²⁶ intermarket hedges involving certain ICC-cleared futures products and OCC-cleared securities options would be margined at ICC based upon the net risk posed by combined securities options and futures positions.²⁷ Options that are carried in firm accounts at OCC and belong to the same class or product group as one or more ICC-cleared futures products carried in proprietary accounts would be eligible for cross-margining.²⁸ If a

¹⁶ Rule 17a-22 (17 CFR 240.17a-22 (1988)) under section 17(a) of the Act requires a registered clearing agency to file with the Commission, within ten days of release, three copies of any material, including manuals, notices, circulars, bulletins, lists, or periodicals issued or made generally available to its participants or to other entities with whom it has a significant relationship.

¹⁷ Section 19(d) of the Act and Rule 19d-1 thereunder (17 CFR 240.19d-1 (1988)) require self-regulatory organizations to report to the Commission notice of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation or access to services, and summary suspensions. As noted above, ICC will perform the dual roles of a futures clearing corporation and a securities clearing corporation. Accordingly, the Commission does not believe it is necessary for ICC to file notice of such actions that are based solely on factors and considerations relating to futures activities and futures services. ICC must, of course, file notice of all Rule 19d-1 actions relating to securities activities, as well as all ICC actions that in any way limit or deny any person access to cross-margining or cross-netting. Under section 19(d)(2) of the Act, the Commission may review, on its own motion or upon application by a disciplined member, all ICC actions for which ICC was required to file a Rule 19d-1 notice.

¹⁸ This report will cover the first six months of operation of ICC's cross-margining service.

¹⁹ By "high market volatility" we mean extreme shifts in the price of cross-margined products within a short period of time. For example, after the October 1987 market break ("market break"), the Commission's staff reviewed average premiums charged in 11 moderately to heavily traded equity options. For the period of September 21-23, 1987, the average price of stocks underlying these options was \$90.87. The average call and put premiums for this period were \$6.51 and \$5.62 respectively. On October 19, the average stock price declined by 21% to \$71.64, and the average call premium decreased approximately 68% to \$2.10. The average put price increased dramatically, however, by 277%, to \$21.18. On October 20, the average stock price declined an additional 9.24% to \$65.02, and the average call premium increased 130% to 4.83. See *The October 1987 Market Break, a Report by the Division of*

Market Regulation, U.S. Securities and Exchange Commission (February 1988) ("Market Break Report") at 8-15.

²⁰ ICC and OCC have agreed to provide data on instances where clearing members would have no or substantially reduced original margin requirements during the first six months of the pilot cross-margining program. ICC and OCC also have agreed to estimate any liquidation loss on such positions and whether such a liquidation loss could be avoided by maintaining the hedge and delaying liquidation. In addition, ICC and OCC have agreed to provide a similar analysis of how cross-margining would have performed during October/November 1987 where, because of the nature of the hedge, little or no original margin would have been collected.

²¹ See *Report of The Presidential Task Force on Market Mechanisms*; submitted to the President of the United States, the Secretary of the Treasury, and the Chairman of the Federal Reserve Board on January 8, 1988.

²² See Brady Report, *supra* note 21, at 64.

²³ See Brady Report, *supra* note 21, at 66.

²⁴ See *Interim Report of The Working Group on Financial Markets*; submitted to the President of the United States on May 16, 1988.

²⁵ See Working Group Report, *supra* note 24, Appendix D at 10, and Brady Report, *supra* note 21, at 65.

²⁶ Currently, the Board of Trade Clearing Corporation ("BOTCC") provides margin credit for members holding treasury bond futures and options on those futures traded on the Chicago Board of Trade ("CBOT"). The Commission understands that there may be informal arrangements at futures clearing organizations whereby clearing members may reduce their margin requirements because of securities options positions held at OCC. See *Cross-Margining Caught in Clearinghouse Cross Fire*, *Futures Magazine*, September 1988, at 42. The Commission believes these informal arrangements, because they do not provide for control of both positions by a single clearing organization or through interfaced clearing organizations, could pose significant risks to futures clearing organizations.

²⁷ For a more detailed description of ICC's cross-margining services, see the Commission's Order approving OCC's cross-margining proposal, Securities Exchange Act Release No. 28153 (October 3, 1988) published elsewhere in this issue of the *Federal Register*.

²⁸ The term "class group" means contracts relating to the same underlying asset; the term

Joint Clearing Member elects cross-margining, it would be deemed to have assigned cross-margined options in its OCC firm account to ICC, who would credit those positions to the member's firm account at ICC. ICC would be responsible to OCC for settlements in those assigned accounts. ICC, however, would delegate those responsibilities to the ICC clearing members for whom the assigned accounts were maintained. Although cross-margined positions would be assigned to ICC, a Joint Clearing Member would effect opening and closing transactions, exercise options, and effect premium and exercise settlements at OCC with respect to cross-margined options.

The Commission believes that ICC's proposed system for cross-margining is designed to promote the prompt and accurate clearance and settlement of securities transactions in several ways. First, cross-margining is designed to ameliorate potential settlement defaults associated with the maintenance of large intermarket hedge positions. If a firm carries both legs of an intermarket hedge with different clearing organizations, a sharp price movement in the underlying asset may generate obligations to one clearing organization that cannot be met except out of funds receivable from the other. The time required to transfer funds from one clearing organization to another, even assuming settlement occurs at the two clearing organizations simultaneously, could lead to temporary settlement defaults. Under cross-margining, such transfers would be reduced, and settlement defaults could be ameliorated, because both legs of the intermarket hedge would be maintained at ICC and ICC would net original and variation margin payments.

Second, cross-margining is designed to reduce liquidation costs incurred by clearing organizations upon member default. Upon member default, a clearing organization carrying both legs of an intermarket hedge can offset an increase in the liquidation cost of one leg of the position with an increase in the value of the other leg. Absent cross-margining, the clearing organization, assuming a failure to meet applicable variation margin calls, generally must bear the entire increase in liquidation cost without the opportunity for such offset.

Third, cross-margining is designed to enhance clearing organization surveillance of risk exposure. A clearing organization attempting to monitor its

risk exposure often is limited to only those positions that are cleared through its systems. A clearing member, however, may be carrying positions in related products with multiple clearing organizations, each unaware of positions carried with the others. While this problem can be addressed partially through better communication among clearing organizations,²⁹ its scope would be reduced if clearing firms carried positions in economically similar products with a single clearing organization or through interfaced clearing organizations. Under cross-margining, ICC would be able to monitor intermarket positions and, more importantly, would have control over all positions carried in a cross-margin account.

Fourth, cross-margining should decrease the cost of maintaining intermarket hedges by reducing the amount of margin required to be deposited on hedged positions. Instead of making margin payments (often in the form of fixed-value deposits) on each leg of a hedge based upon the risk posed by that leg alone, a firm's margin payment would be based upon the combined risk of the hedge. To the extent a gain on one position offsets liquidation costs of other positions, that position would receive credit for margin purposes, thereby reducing original Margin requirements. OCC has indicated that the liquidity problems of several OCC clearing members during the market break could have been eased with a cross-margining system.³⁰

²⁹ The registered clearing agencies have formed a Monitoring Coordination Group ("MCG"), including ICC, designed to improve communication and member surveillance among clearing agencies. The Working Group and the Commission's staff encourage periodic MCG meetings to discuss coordination of and assure appropriate contingency planning with respect to settlement processes. See The Working Group Report, *supra* note 24, Appendix D at 9, and the Market Break Report, *supra* note 19, at 10-21.

³⁰ For example, during the week of October 19, 1987, one Joint Clearing Member accumulated large options and futures positions primarily in the form of intermarket hedges at OCC and ICC. On October 26, 1987, that member faced a margin deficit of \$10 million to OCC and was unable to obtain additional financing to meet that deficit. OCC used authority under OCC Rule 609A (See Securities Exchange Act Release No. 25059 (October 23, 1987), 52 FR 41645) to waive the member's margin requirement rather than liquidate its positions, believing that although certain positions created exposure and margin requirements, other positions provided economic justifications for reduced margin as long as the hedge was maintained. OCC thereafter entered into an agreement with the member whereby the member agreed that OCC could transfer funds between its OCC and ICC bank accounts. OCC also worked with the member to raise capital and transfer positions to other firms. Although liquidation of the member's positions was avoided, the member may not have faced a liquidity crisis if margin calculations factored in the reduced risk posed by

C. Capacity To Safeguard Securities and Funds

As discussed in detail below, the Commission believes ICC has the capacity to safeguard securities and funds, as required by the Act. The Commission bases that determination on (1) its experience with ICC and OCC, (2) representations made by ICC and OCC regarding their capacity to safeguard securities and funds in the midst of extreme market volume and volatility such as that experienced in October 1987, and (3) a review of ICC rules, procedures, and facilities management arrangements.

1. Facilities Management

OCC provides all services and facilities needed for ICC's clearing operation.³¹ During the market break, OCC operations performed adequately in providing services for both ICC and OCC.³² As noted below, however, OCC experienced some operational difficulties during the time and has adopted measures designed to redress those problems. Based on the performance of OCC operations prior to and during the market break and OCC representations concerning measures being taken to correct operational difficulties experienced during the market break, the Commission believes OCC operations are capable of safeguarding securities and funds in compliance with the Act.

During the week of October 19, 1987, OCC experienced problems in obtaining and verifying daily options marking prices and daily last-sale price information from its price reporting vendors. Pricing is critical to ICC and OCC operations, both for calculating margin requirements and valuing securities held as margin. During the week of October 19, 1987, as a result of

the hedged positions. See the Market Break Report, *supra* note 19, at 10-47.

³¹ Services provided by OCC include: corporate and financial administration; control of ICC's clearing operations and related business activities, including maintenance of corporate and financial books and records; data processing and communications; preparation and distribution of reports to clearing members; establishment and maintenance of banking arrangements; billings and collections; marketing; regulatory compliance; legal support; and systems development. In return for these services, OCC charges ICC specific fees set forth in the facilities management agreement.

³² See Market Break Report, *supra* note 19, at 10-39. Also, see *Interim Report on Stock Index Futures and Cash Market Activity During October 1987 to the U.S. Commodity Futures Trading Commission*, November 9, 1987, at 10, in which the staff of the CFTC noted that futures, clearing mechanisms operated effectively during the market break despite unprecedented volume, price volatility, and margin flows.

"product group" means related class groups for which the underlying assets have exhibited sufficient price correlation to warrant margining on a combined basis.

the market's overall decline, the options markets added over 6,000 new option series, many of which were not reported by OCC's price-reporting vendors. As a result, OCC had to obtain last-sale reports from the options markets and correct manually over 5,000 marking prices during evening processing on October 20th and 21st.³³

OCC has taken steps designed to ensure that ICC and OCC operations are not hindered by pricing problems such as those experienced in October 1987. OCC has converted to a new primary vendor and has enhanced its price editing programs to identify errors and obtain last-sale reports from options markets to verify other services.³⁴

2. Recordkeeping and Data Processing

The Commission believes controls surrounding ICC's recordkeeping and data processing functions satisfy the requirements of the Act. ICC receives daily reports of compared trades from each of its participant exchanges. ICC maintains current records of members' outstanding futures and commodity options positions and furnishes to each member a daily position report reflecting: (1) All trades in ICC contracts compared the previous business day; (2) all "as of" trades cleared in the previous processing cycle; (3) net premium balance due to or from ICC as a result of these trades; (4) all long and short positions; and (5) all exercises and assignments. In addition, ICC computes margin requirements daily and distributes to each member a daily margin report reflecting the amount of margin on deposit in the member's accounts, the amount of margin required, and any excess. Based upon position and margin reports, members make daily payments to and receive payments from ICC.³⁵ During the market break, ICC and OCC generally met all routine processing standards and distributed position and margin reports within established time frames.³⁶ Both ICC and OCC represent that reports would be distributed in a timely manner if ICC and OCC again experienced market volume and volatility levels

similar to those experienced in October 1987.³⁷

ICC's internal audit department reviews the adequacy of ICC's systems and controls. An Audit Committee of ICC's Board of Directors, composed of non-management directors, oversees that department, selects ICC's independent public accountant, and reviews ICC's system of internal accounting control with that accountant. The independent public accountant performs annually an evaluation of ICC's internal accounting controls, and ICC makes this report available to all members.

As noted, data processing functions for ICC are provided by OCC. OCC has a primary data center in Chicago and a New York data center that provides short and long-term disaster recovery capabilities. All system software, application software, and master data files are backed-up to magnetic tape daily and are transmitted to the New York data center.³⁸ ICC has assured the Commission that, even during periods of unusually high volume and volatility, ICC has the computer and communications capability to receive data from participants, process that data, and send processed data to participants within time frames established by ICC.³⁹

3. Financial Risk Management

The Commission believes ICC's rules are designed to protect ICC and its members against financial loss associated with its services. The principal source of financial risk to ICC and its members is that members may fail to pay their settlement obligations in a timely manner or default on those obligations, for example, because of financial insolvency. ICC safeguards against these risk include membership standards, staff monitoring of member positions and financial condition, a clearing fund, daily margin requirements, and specific procedures

for handling the obligation of a defaulting member.

ICC membership standards require applicants to have at least \$150,000 in adjusted net capital, as computed in accordance with the CFTC's capital requirements.⁴⁰ Each member also must be a member in good standing of a contract market designated by the CFTC and must be able to show ICC that it has facilities and personnel adequate for the prompt and orderly transaction of business with ICC and its members. If admitted, a member must maintain \$100,000 in adjusted net capital and must submit to ICC annual audited financial statements and quarterly unaudited financial statements. Members also are required to submit to the CFTC monthly financial information under Commodity Exchange Act ("CEA") regulations.⁴¹ If a member fails to meet these requirements, ICC may censure, suspend, or expel the member, as well as limit the activities, functions, or operations of the member.

ICC's clearing fund is composed of cash and U.S. Government securities and is maintained to cover losses due to member default or insolvency. Each member must make a minimum deposit of \$25,000. Currently, ICC has \$5.2 million in its clearing fund. ICC members also must deposit initial margin with ICC for each position carried and must deposit daily variation margin equal to any net loss to those positions caused by daily market fluctuations. Currently, ICC holds \$70 million in margin deposits.

ICC uses two computer systems to calculate and monitor the adequacy of member margin deposits, the Theoretical Intermarket Margin System ("TIMS") and the Concentration Monitoring System ("COMMON"). TIMS is used to calculate daily margin requirements of ICC members. TIMS groups all securities options and futures contracts based on the same underlying interest or closely related underlying interests as one integrated portfolio and measures the effects that price movements in the underlying interests, volatility, and time may have on the liquidation value of that portfolio.

COMMON is designed to monitor, on a real-time basis, the financial ability of ICC members to meet their settlement obligations. COMMON calculates continually the liquidation cost or

³³ See Letter from George Hender, President, ICC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated July 22, 1988, and from Fred Casey, President, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated July 22, 1988.

³⁴ Both on-site and off-site vault storage are used to provide adequate security for the back-up tapes. In addition, all programming documentation is duplicated and stored off-site. Intermediate file back-ups are taken at critical points during clearing system processing to provide for rapid recovery and restart if problems are encountered. Both data centers are secured with electronic locks, television monitors, burglar alarms, and 24-hour security personnel. Also, OCC employs state of the art environmental controls, emergency power back-ups, and fire alarms.

³⁵ See note 37, *supra*.

³⁶ See Market Break Report, *supra* note 19, at 10-39.

³⁷ *Id.*

³⁸ Under cross-margining, those reports also would include appropriate securities option information on cross-margining positions, and ICC net settlement reports would include securities option premiums and exercise and assignment obligations.

³⁹ See Market Break Report, *supra* note 19, at 10-39.

⁴⁰ See 17 CFR 1.17 (1988). Section 1.17 sets minimum financial requirements for registered futures commission merchants and introducing brokers and is the CFTC counterpart to the Commission's net capital rule [17 CFR 240.15c3-1 (1988)].

⁴¹ See 17 CFR 1.18 (1988).

exposure posed by each member's positions and expresses that exposure as a percentage of that member's capital strength.⁴² COMMON also measures a member's diversification by expressing the number of positions contained in any one portfolio as a percentage of all open positions. These capabilities enable ICC to determine when to make intra-day margin calls and provide early warning of potential member difficulties. The nature of ICC's margin system (*i.e.*, the use of historical information and implied market volatility calculations to predict the assumed liquidation value of member positions) and the possibility of Joint Clearing Members having zero original margin requirements with respect to cross-margined positions highlights the importance of ICC's ability to monitor on a real-time basis its exposure and its willingness to take appropriate action when monitoring reveals increased risk. ICC and OCC continue to work with the Commission in examining potential enhancements to COMMON.⁴³

ICC may suspend any member that defaults on its obligations or becomes insolvent. In the event of member default, ICC would convert margin and clearing fund deposits of a suspended member to cash and place that amount in a liquidating settlement account, out of which funds necessary to discharge a suspended member's obligations to ICC would be withdrawn.⁴⁴ Unsettled matched trades of a suspended member would be accepted or rejected⁴⁵ by ICC,

and open positions would be closed out or transferred to another solvent member. If ICC is unable to close out or transfer open short positions, it may purchase for its own account contracts of the same class which comprise the open positions. If ICC is unable to satisfy those obligations with the member's margin and clearing fund deposits, it may assess the clearing fund of all ICC members on a *pro-rata* basis, or, in the alternative, ICC may charge the deficiency in whole or in part to its current retained earnings.

ICC and OCC have specific default procedures for cross-margined positions. Because ICC would hold all margin and clearing fund deposits covering cross-margined positions in OCC options, OCC would look to ICC for performance of obligations of a defaulting Joint Clearing Member with respect to such options. Upon member default, ICC options via closing transactions, offset, or exercise.⁴⁶ ICC would meet all premium and exercise settlement obligations applicable to such options, and any proceeds from the liquidation of such options would be deposited in the member's proprietary liquidating settlement account. If ICC failed to meet the settlement obligations of a suspended member with respect to cross-margined options, OCC would have the right to treat those positions as being carried for the account of ICC and take any action it would be entitled to take pursuant to OCC rules if ICC was a clearing member of OCC.⁴⁷

The Commission believes that cross-margining, in its current form, would not create a conflict between commodity and securities bankruptcy distribution schemes, because no funds of either commodity or securities customers

would be in cross-margined accounts.⁴⁸ According to the staff of the Securities Investor Protection Corporation ("SIPC"), funds in a cross-margined account would be part of the general estate of a bankrupt futures commission merchant/broker-dealer and, therefore, subject to the same treatment that proprietary funds of the debtor would receive in the absence of cross-margining.⁴⁹

4. Standard of Care

The Commission generally believes that clearing organizations should perform custody functions (*i.e.*, all functions related to transaction processing and the safekeeping of customer funds and securities) under a high standard of care, and at a minimum under an ordinary negligence standard of care.⁵⁰ ICC rules and Participant agreement do not specify the standard of care applicable to its custodial functions, but ICC represents that it will be subject to an ordinary negligence standard of care with respect to those functions.⁵¹

ICC performs certain non-custodial functions under a gross negligence rather than ordinary negligence standard of care.⁵² The Commission determines on a case-by-case basis whether particular standard of care is appropriate for non-custodial clearing agency functions.⁵³ The Commission believes that a gross negligence standard of care may be appropriate for certain non-custodial functions that, consistent with minimizing risk mutualization, a clearing agency, its

⁴² Currently, COMMON uses pricing information from the prior day's close. Recently, the Commission approved, on a permanent basis, proposed rule changes by the Chicago Board Options Exchange ("CBOE") and American Stock Exchange ("Amex") to implement automatic order execution systems for equity options. See Securities Exchange Act Release Nos. 25995 (August 15, 1988), 53 FR 31781, and 25996 (August 15, 1988), 53 FR 31779. These systems would permit same-day and intra-day trade matching. The Commission encourages ICC and OCC and other clearing organizations to explore ways in which these new systems could enhance clearing organization monitoring of risk exposure.

⁴³ See Letter from Richard G. Ketchum, Director, Division of Market Regulation, to Wayne P. Luthringhausen, Chairman, OCC, dated February 12, 1988.

⁴⁴ ICC also may, without suspending a defaulting member, apply the member's clearing fund and margin deposits to discharge default obligations. The member is required immediately to make up any deficiencies in its margin or clearing fund deposit resulting from such application or face suspension.

⁴⁵ ICC has the right to reject any unsettled matched trade if it has not received from the purchasing member all premiums due in the account in which the transaction is effected. If a transaction involving a suspended member is rejected, it shall be closed by the other party to the transaction in accordance with the rules of the exchange where the transaction was effected. See ICC Rules 401 and 615.

⁴⁶ ICC and OCC have the authority in certain circumstances to adjust margin requirements for particular members encountering liquidity problems. See Securities Exchange Act Release No. 25841 (June 25, 1988), 53 FR 24543, and Letter from Jean A. Webb, Secretary, CFTC, to Lori R. Burns, Associate Secretary, ICC (May 16, 1988). Additionally, the Commission currently is reviewing proposed rule changes by OCC that would provide OCC flexibility in determining when and whether to liquidate positions of a defaulting clearing member. Securities Exchange Act Release No. 25576 (April 11, 1988), 53 FR 12842. The Commission understands that ICC intends to file similar rule changes with the CFTC.

⁴⁷ OCC would have the right under Chapter XI of its rules to sell long positions and use the proceeds to buy in short positions or, alternatively, to set off long and short positions in the same series of options. A liquidating settlement account would be created for ICC, and any funds remaining in the account after all obligations of ICC to OCC for the cross-margined positions were liquidated would be paid over to ICC. Prior to liquidation of cross-margined positions, non-suspended Joint Clearing Members would be given the opportunity to put up any required margin with OCC and continue to maintain their cross-margined positions with OCC.

⁴⁸ Subchapters III and IV of Chapter 7 of the Bankruptcy Code, 11 U.S.C. 741-766 (1988), the Securities Investor Protection Act, 15 U.S.C. 78 (1988), and CFTC bankruptcy regulations, 17 CFR 190.01 (1988), establish bankruptcy distribution schemes for broker-dealers and futures commission merchants designed to protect customers of those entities.

⁴⁹ Telephone conversation between Rich Konrath, Attorney, SEC, and Ken Caputo, Attorney, SIPC, on July 29, 1988.

⁵⁰ See Standards Release, *supra* note 11; Full Registration Order, *supra* note 10; Securities Exchange Act Release No. 24046 (February 5, 1987), 52 FR 4218; and Securities Exchange Act Release No. 25730 (May 24, 1988), 53 FR 19639.

⁵¹ The Commission notes that the establishment of this standard of care in no way affects the decision reached in *Brower v. Options Clearing Corp.*, 633 F. Supp. 1254 (S.D.N.Y. April 29, 1986), *aff'd*, 724 F.2d 297 (2d Cir. 1986).

⁵² For example, ICC does not assume responsibility for any improper or unauthorized removal from ICC's facilities of tickets, checks, papers, documents or other materials, including items prepared by ICC, unless solely by reason of the gross negligence of ICC. See ICC Rule 210(c).

⁵³ See Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 24046 (February 5, 1987), 52 FR 4218; and 22940 (February 28, 1988), 51 FR 7169.

Board of Directors, and its members determine to allocate to individual service users. Because ICC has demonstrated a high level of responsibility in performing its non-custodial functions and has appropriate safeguards in place to ensure adequate performance, the Commission believes it is appropriate for ICC to perform such functions under a gross negligence standard of care.

D. Other Determinations

1. Capacity to Comply With the Act and Enforce Compliance by Members and Participants

Section 17A(b)(3)(A) of the Act requires that ICC have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require ICC to keep and preserve certain records,⁵⁴ obtain and retain fingerprints from personnel,⁵⁵ and register and participate in the Commission's Lost and Stolen Securities Program.⁵⁶ Based upon a review of ICC rules and procedures, ICC's facilities management arrangement with OCC, and the Commission's continuing experience with OCC as a registered clearing agency, the Commission believes ICC has the capacity to comply with the Act and rules thereunder.

Section 17A(b)(3)(A) of the Act also requires ICC to have the capacity to enforce member compliance with its rules. ICC rules must provide ICC with the authority and ability to discipline members via appropriate sanctions⁵⁷ and must provide fair procedures for the imposition of such sanctions.⁵⁸ As discussed below, ICC rules contain appropriate sanctions and provide ICC the authority to impose such sanctions in an equitable manner.

ICC rules permit it to fine, censure, suspend, expel, or limit the activities of

any member for violations of ICC rules or agreements and require ICC to furnish disciplined members with written notice of charges.⁵⁹ Once a disciplined member is notified of charges, a hearing is held, and a written decision is rendered by ICC's Disciplinary Committee. The disciplined member may appeal the Disciplinary Committee's decision to ICC's Board of Appeals, who may affirm, reverse, or modify the decision. Under section 19(d)(2) of the Act, the disciplined member may appeal final decisions of the Disciplinary Committee or Board of Appeals to the Commission, if ICC was required to give the Commission notice of that decision pursuant to Section 19(d)(1) of the Act. The Commission believes that these procedures substantially fulfill the requirements of the Act.

2. Fair Representation

Section 17A(b)(3)(C) of the Act requires that a clearing agency's rules assure fair representation to its participants and members in the selection of its directors and administration of its affairs. The Act does not define fair representation or establish particular standards of representation. Instead, it provides that the Commission must determine on a case-by-case basis whether the rules of the clearing agency regarding the manner in which decisions are made provide fair representation to participants and members.⁶⁰

The Commission believes ICC's governance structure is designed to assure fair representation of ICC participants and members. ICC's Board of Directors consists of six clearing member directors, three participant exchange directors (one representative from each participant exchange), and ICC's Chairman. Clearing member directors are divided into three groups of two, with one group serving a one-year term, another group serving a two-year term, and a final group serving a three-year term. ICC by-laws provide that the number of member directors

must exceed the number of exchange directors by three, thereby preserving a majority of clearing member directors if more exchanges become ICC participant exchanges.

3. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17(b)(3)(I) provides that a clearing agency's rules may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed below, the Commission believes ICC's rules and its registration as a clearing agency will not impose any inappropriate burdens on competition.

In its letter to the CFTC supporting the concept of cross-margining, the Commission stated that, "no one clearing organization should be permitted to monopolize the availability of cross-margining concerning a particular option or future."⁶¹ The Commission understands that certain futures clearing organizations are concerned that the ICC and OCC cross-margining proposal may provide ICC a monopoly over the clearing of cross-margined accounts.⁶² Specifically, the concern is that OCC, as the sole issuer of standardized options, would transfer options positions only to omnibus accounts held by ICC, permitting only ICC to offer cross-margining of intermarket positions. The Commission's approval of OCC's cross-margining proposal is conditioned upon representations by OCC that it would make access to proprietary cross-margining available upon reasonable terms to other clearing organizations.⁶³ Furthermore, under section 19(d)(1) of the Act, if OCC or ICC limits or denies anyone access to cross-margining, it must file notice of such action with the Commission, and, under section 19(d)(2) of the Act, the Commission may institute proceedings to review that action.⁶⁴ If

⁵⁴ Rule 17a-1 (17 CFR 240.17a-1 (1988)) requires a registered clearing agency to keep and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other records, as are made or received by it in the course of its business.

⁵⁵ Rule 17f-2 (17 CFR 240.17f-2 (1988)) requires a registered clearing agency to obtain and maintain a record of fingerprints of each of its directors, officers, and employees who do not qualify for an exemption from fingerprinting contained within the rule. A copy of each set of fingerprints also must be sent to the Federal Bureau of Investigation.

⁵⁶ Rule 17f-1 (17 CFR 240.17f-1 (1988)) requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a participant is required to report the discovery of a theft or loss of a security into its possession whether the security has been reported lost, missing, or stolen.

⁵⁷ See section 17A(b)(3)(G) of the Act.

⁵⁸ See section 17A(b)(3)(H) of the Act.

⁵⁹ Except when a member is summarily suspended or summarily prohibited or limited access to services, ICC rules require ICC to furnish a written statement of charges to the affected ICC member before the imposition of any fine or other sanction. Only the Board of Directors or Chairman of ICC may impose a summary action and then only if the member (1) has been and is expelled or suspended from membership in a contract market, (2) is in default in the performance of any obligation to ICC, or (3) is in such financial or operating difficulty that the Board or Chairman of ICC determines that suspension is necessary for the protection of ICC, its members, creditors, or investors.

⁶⁰ See Standards Release, *supra* note 11.

⁶¹ See Letter from Jonathan G. Katz, Secretary, SEC, to Jean A. Webb, Secretary, CFTC, dated May 5, 1987.

⁶² See, e.g., Letter from Thomas R. Donovan, President, Chicago Board of Trade, to Jean A. Webb, Secretary, CFTC, dated April 13, 1987.

⁶³ OCC and ICC represent that they have tried to recruit other clearing organizations to participate in the cross-margining proposal but have been unsuccessful.

⁶⁴ Under section 19(d)(2), the Commission may review such actions on its own motion or upon application by the affected person.

the Commission finds that such action imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, it may set aside the action under section 19(f) of the Act.

4. ICC Fees

Section 17A(b)(3) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. That Section also provides that clearing agency rules not impose any schedule of prices or fix rates for services rendered by participants. The Commission has reviewed ICC fee schedules and found each service fee to apply equally to all participants using that service. In addition, ICC rules do not in any manner impose prices or fix rates for services provided by its participants. Accordingly, the Commission believes ICC rules and fees are consistent with the Act.

5. ICC Request for a Partial Exemption From Section 17A(b)(3)(B) of the Act

Pursuant to section 17A(b)(1) of the Act, the Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. Because ICC membership standards, in part, are in conflict with section 17A(b)(3)(B) of the Act, ICC has requested an exemption from that provision. Section 17A(b)(3)(B) provides that a registered clearing agency's rules enable registered broker-dealers, registered securities clearing agencies, registered investment companies, banks, and insurance companies to apply for membership. As noted, ICC rules permit only members of a designated contract market or registered futures association engaged in clearing contract market transactions to apply for ICC membership. ICC represents that other entities have not expressed an interest in becoming ICC members. In the Full Registration Order, the Commission granted OCC's request for a section 17A(b)(3)(B) exemption on the condition that OCC establish membership standards for excluded entities if such entities applied or indicated an interest

in applying for membership.⁶⁵ ICC has agreed to the same condition with respect to its membership standards,⁶⁶ and, on that basis, the Commission is granting ICC's section 17A(b)(3)(B) exemption request.

IV. Conclusions and Determinations

The Commission has reviewed ICC's application for temporary registration as a clearing agency pursuant to sections 17A(b) and 19(a)(1) of the Act and Rule 17Ab2-1 under the Act. The Commission also has reviewed ICC's request for an exemption from section 17A(b)(3)(B) of the Act.

After reviewing ICC's application for registration, the Commission has determined that ICC is organized and has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard funds in its custody or control or for which it is responsible; to comply with the provisions of the Act and the rules and regulations thereunder; to enforce compliance by its participants with ICC rules; and to carry out the purposes of section 17A. The Commission also has determined that ICC rules are designed to promote prompt and accurate clearance and settlement of securities transactions; to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions; to prevent unfair discrimination in the admission of participants or among participants in the use of ICC; and, in general, to protect investors and the public interest. In addition, the Commission has determined that ICC rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants; do not impose any schedule of prices, or fix

rates or other fees for services rendered by its participants; provide for appropriate discipline of participants for violation of any provision of ICC rules by expulsion, suspension, limitation of activities, fines, censure, or any other fitting sanction; provide a fair procedure with respect to the disciplining of participants, the denial of participation to applicants, and the prohibition or limitation by ICC of any person with respect to access to ICC services; and do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

The Commission has granted ICC a partial exemption from section 17A(b)(3)(B) of the Act on the condition that ICC establish participation standards for excluded entities if they apply or indicate an interest in applying for ICC membership. The Commission finds that this exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

It is therefore ordered, pursuant to sections 17A(b)(2) and 19(a) of the Act and Rule 17Ab2-1(c)(2) thereunder, that ICC's registration be and it hereby is granted, and that ICC hereby is granted a partial exemption from the participation standard in section 17A(b)(3)(B) of the Act, subject to the terms, exemptions, and other qualifications contained in this Order.

By the Commission.

Jonathan G. Katz,
Secretary.

Dated: October 3, 1988.

[FR Doc. 88-23165 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26145; File No. SR-MBS-88-7, MBS-88-9, and MBS-88-11]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Temporarily Approving Proposed Rule Changes Relating to Depository Division Rules

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ The proposals would

⁶⁵ In 1985, Canadian firms indicated an interest in applying for OCC membership. In response, OCC filed and the Commission approved an OCC proposed rule change that permitted Canadian and other foreign firms to become OCC clearing members. The proposal also established membership standards for these firms. See Securities Exchange Act Release No. 22123 (June 6, 1985), 50 FR 24853. Furthermore, on July 21, 1987, the Commission approved an OCC proposal allowing Canadian firms to participate in OCC under financial reporting and responsibility standards of Canada. See Securities Exchange Act Release No. 24725 (July 21, 1987), 52 FR 28401.

⁶⁶ See Letter from Michael D. Weiner, Assistant Secretary, ICC, to Jonathan F. Katz, Secretary, SEC, dated October 3, 1988.

¹ 15 U.S.C. 78s(b)(1).

amend various MBSCC Depository Division rules including those pertaining to participant accounts, transfers of mortgage-backed securities, the MBSCC participant fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the *Federal Register* on May 11, 1988.²

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss with MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. For those reasons, the Commission is temporarily approving the proposals through October 31, 1988.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes (File Nos. SR-MBS-88-7, MBS-88-9, and MBS-88-11) be, and thereby are approved temporarily through October 31, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan Katz,
Secretary.

Dated: October 3, 1988.

[FR Doc. 88-23170 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26139; File No. SR-MSE-88-6]

**Self-Regulatory Organizations;
Proposed Rule Change by Midwest
Stock Exchange, Incorporated
Relating to the Operation of the
Midwest Automated Execution System
("MAX")**

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 September 9, 1988, the Midwest Stock Exchange, Incorporated 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 of the Terms of Substance of
the Proposed Rule Change**

The Midwest Stock Exchange, Incorporated is proposing to amend its rules in respect to the operation of the Midwest Automated Execution System ("MAX"), to eliminate the present limit order execution criterion which requires a co-specialist to manually execute 300 shares for every 500 shares of the same issue that trades at the limit price on the primary market.

**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**

(a) MSE Article XX, Rule 34 (BEST Rule) requires that all agency limit orders up to 1099 shares be filled if, among other criteria, the issue is trading at the limit price on the primary market. A fill is not required, however, if it can be shown that the order would not have been executed if it had been sent to the primary market or the broker and specialist agree to specific volume related or other criteria for requiring a fill. In 1981, the Exchange implemented new limit order execution criteria for limit orders entered over the MAX System. This new criteria required a specialist to manually execute 300 shares of a MAX entered limit order for every 500 shares that trade at the limit price in the primary market. When a limit order is received over the MAX System and prints out, the specialist holds the order and determines when each limit order received should be executed based on his/her observation of the volume traded on the primary market. This rule change defined

specific volume related criteria requiring a fill of limit orders entered over the MAX System.

In 1985, another rule change was implemented which clarified how specialists should handle existing limit orders entered manually in the book when executing a MAX limit order at the same price using the 3 for 5 criteria. Under that rule change, upon the printing of 500 shares in the primary market, the specialist is required to execute both the MAX order under the 3 for 5 criteria and 300 shares of the resting order. All resting orders in the book would constitute one order for purposes of this rule. This change was implemented with a view to providing execution criteria which would be equitable to limit orders entered both by MAX and by floor broker, while at the same time recognizing the differences between the expectations of member firms utilizing an automated execution system and those transmitting orders through their representatives on the trading floor.

Since 1985, however, experience has shown that the "3 for 5" criteria has created an administrative burden for the specialist as well as additional confusion, not less, as to which limit orders and what size are entitled to a fill based on volume on the primary market. The proposed rule change would eliminate the "3 for 5" rule, and all limit orders, whether entered over MAX or by floor broker, would be handled in the same manner under the general BEST rule requirement as outlined above.

(b) The proposed rule change is consistent with section 6(b)(5) of the Act in that it facilitates transactions in securities and removes impediments to and perfects the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

**(B) Self-Regulatory Organization's
Statement on Burden on competition**

The Midwest Stock Exchange, Incorporated 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**

Within 35 days of the date of

² Securities Exchange Act Release Nos. 25660 (May 4, 1988) 53 FR 16812; 25662 (May 4, 1988) 53 FR 16808; 25659 (May 4, 1988) 53 FR 16818.

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 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 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 October 28, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

September 30, 1988.

[FR Doc. 88-23168 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26146; File No. SR-NSCC-87-12]

Self Regulatory Organizations, National Securities Clearing Corp. ("NSCC"); Order Extending Approval of Proposed Rule Change on a Temporary Basis.

On October 15, 1987, NSCC filed a proposed rule change (File No. SR-NSCC-87-12) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change

revises NSCC's rules to authorize and establish financial and operational standards for a new category of broker-dealer membership, whose activities would be restricted exclusively to the use of the Fund/Serv service. The proposal also revises NSCC's rules concerning Fund/Serv clearing fund contributions and the allocation of losses in the event of service losses or member default. As discussed below, the Commission is extending its approval of the proposed rule change on a temporary basis, through November 30, 1988.

The Commission's prior orders stated our preliminary belief that the proposed rule change was consistent with the Act and, accordingly, approved the proposal on a temporary basis.² Before granting final approval of the proposed rule change, however, the Commission required NSCC to evaluate the benefits accruing from lower Fund/Serv clearing fund contributions and limited member assessments. The Commission also asked NSCC to monitor member Fund/Serv settlement activity, and report on the risk that Fund/Serv settlement debits and credits could not be reversed and fully-collected from other Fund/Serv system users. NSCC submitted preliminary information in April 1988, and additional information on September 12, 1988. The Commission plans to analyze this information before it considers further action on this proposal. Therefore, the Commission believes that it is appropriate to extend the approval of the proposed rule change for two months.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the approval of proposed rule change (SR-NSCC-87-12) be, and hereby is, extended on a temporary basis through November 30, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 30, 1988.

Jonathan Katz,
Secretary.

[FR Doc. 88-23240 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

² The proposed rule change was approved on a temporary basis for three months until April 30, 1988 and was extended twice more until September 30, 1988. See Securities Exchange Act Release No. 25290 (January 26, 1988), 53 FR 3101 (February 3, 1988), No. 25641 (May 2, 1988), 53 FR 16488 (May 9, 1988), No. 25861 (June 28, 1988), 53 FR 28486 (July 28, 1988).

[Release No. 34-26150; File No. SR-NYSE-88-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Numerical Criteria for the Original and Continued Listing of Domestic Companies

I. Introduction and Background

On July 14, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's minimum original listing standards and continued listing criteria for domestic companies, as set forth in sections 102.00 and 802.00 of the NYSE Listed Company Manual.

The proposed rule change was noticed in Securities Exchange Act Release No. 25935 (July 22, 1988), 53 FR 28487 (July 28, 1988). No written comments were received by the Commission on the proposed rule change.

The proposed rule change makes three changes to the Exchange's current listing standards applicable to domestic companies: (i) it grants the authority to approve units of trading of less than 100 shares by the Exchange's Board of Directors for purposes of its original and continued listing rules; (ii) it reduces proportionally the number of publicly-held shares required for purposes of the Exchange's original listing standards; and (iii) it reduces proportionally the number of publicly-held shares required for purposes of the Exchange's continued listing standards. In its filing, the NYSE stated that the primary purpose of the proposed rule change is to provide " * * * for listing a company where the Exchange determines to designate the unit of trading as less than 100 shares." The only example of such an issuer cited by the Exchange is one where the Exchange determines that a stock with an "unusually high price" should be traded in a 10 share unit.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See, e.g., Berkshire Hathaway to be Costliest Stock on Exchange, *Wall Street Journal*, August 11, 1988, at 42, where Berkshire Hathaway, Inc. was identified as an intended candidate for listing under the NYSE's proposed rule change. On August 10, 1988 Berkshire Hathaway was quoted at \$4.442 bid in over-the-counter trading.

¹ 15 U.S.C. 78(b)(1).

II. Description of the Proposal

A. Original Listing

Current NYSE distribution guidelines applicable to domestic companies⁴ are based on two separate quantitative standards: (i) The number of shareholders, and (ii) the number of publicly-held shares. For purposes of original listing applications, section 102.01 of the NYSE Listed Company Manual generally requires an equity issue to have at least 2,000 holders of 100 shares or more.⁵ The rule change would amend the general listing standards and permit the consideration of listing applications if the company's issue has at least 2,000 holders of the designated "unit of trading" as determined by the Exchange's Board of Directors in the proposed exercise of its authority under NYSE Rule 55.⁶ The Exchange's alternate listing standards allow companies to apply for listing if an issue has at least 2,200 total holders and an average monthly trading volume of 100,000 shares. The rule change does not propose to amend the alternate listing standards governing the number of holders.

In addition to satisfying one of the above alternatives governing the number of shareholders, section 102.01 of the Manual generally requires an issue to have float of 1,100,000 publicly-held shares.⁷ Under the proposed rule change, if the unit of trading is designated as less than 100 shares, the publicly-held shares requirement for purposes of original listing would be proportionately reduced. Thus, for example, if the unit of trading is designated as ten (10), then the publicly-held shares requirement would likewise

be correspondingly reduced by a factor of ten (10) to arrive at a 110,000 publicly-held shares requirement for purposes of listing applications.

B. Continued Listing

For purposes of the Exchange's continued listing standards, section 802.00 of the NYSE Listed Company Manual generally requires a listed issue to have at least 1,200 holders of 100 shares or more. The rule change would amend the Exchange's continued listing standards so that a listed issue must continue to have at least 1,200 holders of the designated "unit of trading" as determined by the Exchange's Board of Directors in the proposed exercise of its authority under NYSE Rule 55. Similarly, under current Exchange continued listing standards, the number of publicly-held shares must be greater than or equal to 600,000 shares.⁸ Under the proposed rule change, if the unit of trading is less than 100 shares, the publicly-held shares requirement for purposes of continued listing would be proportionately reduced. Thus, for example, if the unit of trading is designated as ten (10), then the publicly-held shares requirement would likewise be correspondingly reduced by a factor of ten (10) to arrive at a 60,000 publicly-held shares requirement for purposes of continued listings.

III. Discussion

Subject to the Commission's oversight authority under section 19 of the Act, each Exchange determines and administers its own listing requirements. In setting these requirements, the national securities exchanges should provide clear standards that are not idiosyncratic and arbitrary. We find that the proposed rule change meets this test, even though it vests significant discretion in the NYSE Board to establish a "unit of trading" that is less than 100 shares.⁹ The fact that the proposal does not seek to amend the Exchange's current financial guidelines, including the market capitalization factor, constrains the discretion afforded the Board. The NYSE guidelines for original and continued listing generally require that an issuer have an aggregate market value of \$18,000,000, and \$5,000,000 respectively.¹⁰ These

guidelines will not be changed under the proposed rule change. Thus, given the relationship of the market capitalization (which remains constant) to the share float (which may vary under the proposal), in most cases only issuers with higher-priced shares would be eligible for listing under the proposal.¹¹

In addition to providing clear guidelines, primary market listing standards should be designed to ensure that fair and orderly markets can be made in the listed securities.¹² Although odd-lot trades, *i.e.*, any purchase or sale of less than 100 shares,¹³ usually should be discounted when evaluating the potential depth and liquidity of the secondary market for a particular security,¹⁴ the standards established in the proposed rule change should be adequate to ensure that a continuous auction market can be made. A very high priced security often trades in sizes of less than 100 shares, especially for retail customer orders. Unlike the market for normal priced securities, odd-lot transactions provide much of the continuity in very high priced securities. Indeed, for some very high priced securities, the Exchange's Market Performance Committee will examine units of trading of less than 100 shares when reviewing specialist performance criteria. Thus, it is reasonable to look to

⁴ The Exchange's proposed rule change would amend the NYSE Listing Manual's section 102.01 listing standards applicable to domestic companies. However, the Commission recognizes that non-domestic companies may apply for listing under these same standards, since Section 103.00 of the Manual provides for the original listing of otherwise qualified non-U.S. companies under the Exchange's domestic listing criteria.

⁵ When calculating the number of round-lot holders for purposes of evaluating original listing applications (and for continued listing), the Exchange includes both holders of record and the number of beneficial holders of stock held in the name of Exchange member organizations, *i.e.*, shares held in "street name."

⁶ As a general rule, NYSE Rule 55 states that the unit of trading for stocks on the Exchange is 100 shares. However, NYSE rule 55 authorizes the Board to designate the unit of trading as less than 100 shares. The Exchange intends to exercise this existing authority for purposes of implementing the proposed rule change.

⁷ The Exchange excludes the issuer's shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more, for purposes of determining the number of "publicly-held" shares. NYSE Listed Company Manual § 102.01.

⁸ NYSE Listed Company Manual § 802.00.

⁹ In the event that an issuer splits (or reverse splits) its listed securities, the Commission expects that the Exchange, operating through its Market Performance Committee, will reevaluate the designated "unit of trading" if the security is originally listed under the standards proposed by the rule change.

¹⁰ See, NYSE Listed Company Manual §§ 102.01, 802.00.

¹¹ The Exchange has informed the Commission that it currently intends to apply the proposed listing standards only to higher-priced shares, although it is possible that other appropriate situations for the alternative standards may arise in the future. Conversation, September 2, 1988, between Howard Kramer, Assistant Director, Division of Market Regulation, SEC, and David Damijan, Senior Vice President, New Listings and Corporate Liaison, NYSE.

¹² For example, a "fair and orderly market" is the criterion of section 11(a)(1) of the Act for the Commission's regulation of trading by Exchange members for their own account. 15 U.S.C. 78k(a)(1). Similarly, section 11(b) of the Act directs that specialists shall not be permitted to act as dealers more than is "reasonably necessary . . ." 15 U.S.C. 78k(b).

¹³ Although any purchase or sale of less than 100 shares is generally considered an odd-lot, inactive equities (or, as another example, high-priced preferred stock) generally trade in round lots of 10 shares.

¹⁴ The market "depth" of a particular security refers to the quantity of buying and selling interest and the potential activity on each side of the market. Depth is the product of several different factors, including the total amount of the class of securities outstanding, and the breadth of distribution among the general public, exclusive of amounts concentrated in the hands of officers, directors, controlling persons, and other holders of large blocks of a security. A "liquid" market is one in which a willing seller can readily (or perhaps immediately) find a buyer, or vice versa, at a mutually agreeable price. See generally, SEC, Report of the Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963), Part 2 at 15-19.

the number of holders of a smaller unit for listing purposes for these securities.

IV. Conclusion

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5)¹⁵ and the rules and regulations thereunder. For the limited purpose of the original listing of high-priced shares as contemplated by the NYSE's proposal, the Commission considers it appropriate to designate the unit of trading at a level less than 100 shares. The Commission believes that the proposal is sufficiently narrow that it will not permit securities incapable of generating a fair and orderly market to be listed on the Exchange. Finally, the standards proposed by the NYSE provide sufficiently clear guidelines for listing eligibility.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁶ that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Date: October 3, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23241 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26153; File No. SR-OCC-86-17]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change Establishing a Cross-Margining Program

On August 12, 1988, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC") or "Commission", pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule change that establishes a system for cross-margining OCC-cleared options with futures contracts and options on futures traded on contract markets and cleared by the Intermarket Clearing Corporation ("ICC"), OCC's futures clearing organization subsidiary.² The

Commission published notice of the proposed rule change on August 27, 1986.³ The Commission received one comment letter in support of the proposal.⁴ This Order approves the proposal.⁵

I. Introduction

Since 1982, securities exchanges and futures exchanges have developed and traded options and futures contracts on stock indexes, foreign currencies, and debt instruments ("derivative products"). These derivative products enable financial institutions and investors to, among other things, fix the price at which an asset can be bought or sold in the future. The primary economic purpose of these derivative products is to provide protection or hedging against exposure to certain economic risks.⁶ As the number of derivatives options and futures products has increased, so too have the opportunities for intermarket hedging.

Intermarket hedging involves the establishment of a position in one market and an offsetting position in another market on the same or similar underlying interest such that a decrease in value of one leg of a hedged position is offset, to some extent, by a corresponding increase in value of the other leg of the hedged position. Increasingly, to reduce the risk of positions they carry, market participants in one market are hedging in other markets. For example, a market

participant with a short option position (short call) in the New York Stock Exchange ("NYSE") Composite Index ("NYA") cleared at OCC can hedge against losses on the options position by buying a futures contract on the New York Stock Exchange Composite Index ("YXZ") traded on the New York Futures Exchange ("NYFE") and cleared at ICC.⁷

Currently, market participants must deposit margin at separate clearing organizations for each leg of an intermarket hedge position. In the example above, the OCC clearing member writer of the NYA call would have to post at OCC the premium plus an additional margin amount to protect against adverse market movements.⁸ The writer also would be required to meet additional margin requirements each day that the market moved against its position.⁹

⁷ The degree to which an options position is in- or out-of-the-money and its historical and implied volatility in large part determine the number of futures contracts necessary to fully hedge the options position.

⁸ OCC currently maintains two separate margin systems, one for equity options and another for non-equity options ("NEOs"). Under OCC's equity margin system, clearing members can reduce margin requirements through OCC netting of hedged positions within the same option class (spread margin). Similarly, OCC's NEO margin system employs a portfolio evaluation methodology, using options price theory to project the cost of liquidating a portfolio of positions in the event of an assumed "worst case" change in the price of the underlying asset. See Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127, in which the Commission approved OCC's NEO margin system. Both systems produce a margin requirement that the OCC clearing member can satisfy with cash, government securities, letters of credit, or valued securities.

Commission staff, in its report on the October market break [Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report")], generally concluded that OCC's NEO margin system is a reliable method of risk measurement. Nevertheless, in light of the \$8.5 million loss assessed *pro rata* among OCC clearing members resulting from a clearing member failure, the Commission staff directed OCC to reassess its NEO margin system in light of the volatility experienced during and after October 1987. In connection with this directive, OCC appointed a special industry sub-committee to conduct a review of all aspects of OCC's safeguarding systems. The Commission has determined not to defer action on the OCC proposal pending completion of that study because the proposal is limited in scope and duration—to proprietary accounts and for the 18 month period of ICC's temporary registration.

⁹ On the other hand, the OCC clearing member holding the opposite (long) side of the option position would be required to pay OCC the option premium. Thereafter, if the market moved in favor of the clearing member, the position would increase in value but no gain would be paid until exercise. If the market moved against the clearing member and the option was at- or out-of-the-money at expiration, the position would be worthless and the clearing member would have no obligation to pay for the decrease in value.

futures and options on futures. See Securities Exchange Act Release No. 21706 (February 4, 1985), 50 FR 53431.

³ Securities Exchange Act Release No. 23547 (August 21, 1986), 51 FR 30606.

⁴ See letter from Richard T. Chase, Executive Vice President, Philadelphia Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 29, 1986. The Commission notes, however, that in connection with a related Petition For Rulemaking by ICC before the Commodities Futures Trading Commission ("CFTC"), the CFTC receive 35 comment letters. The Commission also has reviewed these comment letters, to the extent that they address cross-margining in general, in conjunction with its review of the OCC rule filing.

⁵ The CFTC has approved a corresponding rule change by ICC. That approval is expressly conditioned on approval of the OCC rule change by the SEC and is effective for a period of one year. See letter from Jean A. Webb, Secretary, CFTC, to George S. Hender, President, ICC, dated June 1, 1988.

The CFTC has imposed a number of limitations on ICC's cross-margining system, e.g., approval is for a one-year period, participant must meet eligibility standards, and ICC is subject to stringent monitoring during the one-year period. In light of the temporary nature of the Commission's approval of ICC's registration today, the Commission notes that the cross-margining system is, in effect, a pilot program.

⁶ See Board of Governors of the Federal Reserve System, CFTC, SEC, A Study of the Effects on the Economy of Trading in Futures and Options (December 1984).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See 17 CFR 200.30-3(a)(44).

¹⁸ 15 U.S.C. 78s(b)(1) (1988).

¹⁹ In 1985, the Commission approved OCC's establishment of ICC as a wholly-owned subsidiary to clear transactions in contracts for the sale of

At ICC, the clearing member would be required to make an original margin deposit (usually an amount sufficient to cover an expected one-day market movement in the underlying interest) on the long YXZ futures position. Both the long and short sides of futures contracts post margin as a good faith deposit for performance of their contractual commitments.¹⁰ Thus, because the positions are carried at different clearing organizations and each is margined separately without regard to the other, the clearing member may be required to meet higher margin requirements than is warranted by the risk of the combined positions.¹¹

OCC's proposed rule change provides for margining such intermarket hedge positions as a single portfolio at ICC. The proposal enables clearing members of OCC that are also clearing members of ICC ("Joint Clearing Members") to elect to maintain certain non-futures options positions at ICC, and combine those positions with related futures positions for purposes of calculating margin requirements. At this time, cross-margining will be available only for positions carried in Joint Clearing Members' proprietary accounts.

II. Description

As noted above, OCC's proposed rule change establishes a system for cross-margining OCC-cleared options and ICC-cleared futures positions in a Joint Clearing Member's proprietary account. Specifically, the proposal consists of a new Section 20 to Article VI of OCC's By-laws dealing with clearance of exchange transactions, an Intermarket Margining Agreement ("IMA") between ICC and OCC,¹² and an amendment to

section 5 of Article VIII of OCC's By-laws with respect to application of the OCC clearing fund.

New Section 20 to OCC's By-laws enables a Joint Clearing Member to elect to assign options positions in its firm account with OCC to ICC for cross-margining with futures positions on eligible underlying interests carried in its ICC firm account. ICC will designate as eligible those OCC-cleared options that belong to the same "Class Group" or "Product Group" as one or more ICC-cleared futures products.¹³ Initially, certain stock index and foreign currency products comprising two Product Groups will be eligible for cross-margining.¹⁴ For example, futures contracts on the NYSE Composite Index will form a Class Group with securities options on the same index and this Class Group will be included in the same Product Group with other broad-based indexes. Options on a particular foreign currency will be included in the same Class Group as ICC-cleared futures contracts on the same underlying foreign currency. In addition, all OCC options and ICC-cleared futures contracts on the Swiss franc, the French franc and the Deutsche mark will be included in the Product Group comprised of continental currencies. These Product Groups, broad-based indexes and continental currencies, reflect existing groups of assets at ICC and OCC.

The proposal is limited to positions carried in a Joint Clearing Member's proprietary accounts at ICC and OCC.¹⁵

¹⁰ As defined in the ICC Margin Resolution, a "Class Group" consists of options and futures covering the same underlying asset and a "Product Group" consists of options and futures covering closely related assets whose prices may be expected to move together. These terms are defined similarly in OCC's margin rules. See OCC Rules, Chapter VI. For each pair of Class Groups, ICC computes a coefficient of determination, known in statistical terms as "r²", measuring the percentage variation exhibited by the security underlying one Class Group that can be explained by a concurrent variation in the security underlying the other Class Group. Based on the lesser of either the three-month or one-year coefficient of determination, ICC assigns Class Groups to Product Groups as long as the Class Group has a coefficient of determination greater than 70% with each other Class Group within the Product Group. A 70% of determination translates into approximately an 84% correlation coefficient, known in statistical terms as "r". The Product Group percentage, i.e., the haircut applied to additional margin credits to account for the lack of perfect correlation between Class Groups, is calculated by determining the lowest coefficient of determination among all the Class Groups included in the Product Group over the previous three-month and one-year periods.

¹¹ A list of the products, their Class Group and Product Groups, the Exchange on which they are traded, and the clearing organization through which they are cleared is attached as Exhibit A.

¹² Although it appears that no statutory, Commission or CFTC rule changes are required to

A proprietary account generally includes non-customer positions of a clearing member. ICC rules, however, provide that a clearing member that elects cross-margining may not carry positions of anyone other than the Joint Clearing Member itself in its proprietary account. Therefore, only a Joint Clearing Member's proprietary positions will be eligible for cross-margining.¹⁶

The Commission understands that fewer than five ICC and OCC clearing members will be eligible for cross-margining at this time.¹⁷

Positions in OCC options that are carried in a Joint Clearing Member's firm account and that are eligible for cross-margining will be assigned to ICC and margined under ICC's existing margin system based upon the net risk of all of the cross-margined positions in each Product Group and Class Group as if such positions were carried in a single firm account at ICC.¹⁸ ICC will collect

implement a cross-margining system for proprietary accounts, provisions of the Commodity Exchange Act ("CEA") and CFTC regulations relating to customer protection indicate that statutory and/or CFTC rule changes may be needed to implement a cross-margining system for customer accounts. See, e.g., Hearings before the Subcomm. on Conservation, Credit, and Rural Development of the House Comm. on Agriculture, 99th Cong., 2nd Sess. 23 (1986); and CFTC, Cross-Margining of Commodity Futures, Commodity Options, and Securities Options: Request for Comments on Petition for Rulemaking, 51 FR 41117 (November 13, 1987). Customer protection issues under Rule 15c3-3 of the Securities Exchange Act of 1934 need to be resolved as well in order to make cross-margining available for customer accounts.

¹⁶ Only dually-registered futures commission merchants ("FCMs") and broker-dealers can avail themselves of Joint Clearing Member status and cross-margining because CFTC customer segregation requirements prohibit co-mingling options and futures positions in the same account. The Commission understands that for economic and other business reasons, some firms conduct their options and futures trading activities through separate corporate entities. These organizations would not be eligible for cross-margining at this time. In addition, many options market makers clear their futures positions through customer accounts at clearing firms that belong to futures clearing organizations. ICC has indicated, however, that it may submit a rule change to the CFTC that would allow such non-customer positions to be carried in proprietary cross-margining accounts. The CFTC staff has stated that it will explore means of extending cross-margining to such non-customers during the pilot phase. Telephone conversation between John Lawton, Associate Director, Division of Trading and Markets, CFTC, and Judith Poppalardo, Staff Attorney, Division of Market Regulation, SEC, on July 19, 1988.

¹⁷ Those clearing members that are expected to participate in the pilot are O'Connor & Associates; O'Connor & Company; Spear, Leeds & Kellogg; and Timber Hill Incorporated.

¹⁸ With variations to account for futures margining, ICC's margin system is substantively identical to OCC's NEO margin system. OCC's NEO margin system was designed to serve as an intermarket margin methodology for futures and options. The system uses options price theory to

Continued

¹⁰ Each day thereafter for as long as the position is maintained, as the position increases or decreases in value, profits are collected or losses are paid by the clearing member at the futures clearing organization.

¹¹ As discussed more fully, OCC currently operates a "portfolio" margin system that takes into account all options positions in a particular portfolio of NEOs. Under that system, OCC, for example, provides margin credit for certain index options against options based on other stock indexes based on the correlation of price movements in the various index products. OCC also provides margin credit, at reduced levels, for in-the-money long options against short options on unrelated underlying assets. Although certain futures clearing organizations also calculate margin on a portfolio basis that includes a variety of futures products on multiple underlying interests, positions at one futures clearing organization generally cannot be used to offset margin at the various other futures clearing organizations.

¹² To be able to perform the functions described in the IMA, ICC has filed and the Commission has this day temporarily approved, ICC's application for registration as a clearing agency under Section 17A of the Act.

and hold the margin for all cross-margined positions; OCC will not collect margin on cross-margined positions.

For example, on October 14, 1987, one long December futures contract in the XYZ traded on the NYFE could have been hedged with five long December 170 put options on the NYA traded on the NYSE. Under the cross-margining system, both of these positions would have been margined at ICC based on the overall risk of the combined positions. Using the ICC margin methodology, because the options and futures positions are included in the same Class Group, an original margin requirement of \$1,500 on the long futures position would have been offset by the long put option positions valued at \$3,190, resulting in no original margin requirement at ICC on the combined position.¹⁹ The long futures position decreased in value from \$85,575.00 to \$57,500.00 during the period from October 14 through October 20, 1987 causing ICC to raise original margin requirements on the XYZ contract from \$1,500 on October 14, to \$1,750 on October 16, and to \$4,000 on October 19. At the same time, the long put options increased in value from \$3,190 on October 14, to \$7,250 on October 16, and to \$28,500 on October 19, negating any original margin requirement on the combined position for that period. (The reductions in this example involve original margin requirements only. The Joint Clearing Member would have been required to post variation margin on the

declining long futures position in the amount of \$1,875 on October 16, \$4,300 on October 19, and \$21,900 on October 20.)

If, instead, the market had moved in favor of the long futures position creating a variation margin payment from ICC, the long put options could have decreased in value to the extent that maintenance margin would have been required on the combined position. This could have been covered by the variation margin payment credited to the Joint Clearing Member on the long futures positions.²⁰

Even though cross-margined options will be margined in an ICC account, a Joint Clearing Member would effect opening and closing transactions, exercise options and settle premium and exercise and assignment obligations with OCC for cross-margined options, just as it does in the case of other OCC-cleared options. All premium, margin, and settlement obligations at OCC are combined to arrive at a net daily settlement amount for each account each day. Thus, Joint Clearing Members will settle OCC obligations at OCC and will settle ICC obligations at ICC, regardless of whether they are related or unrelated to cross-margined positions.

In the event that a Joint Clearing Member should fail, ICC would be authorized to liquidate options and futures positions it holds for the defaulting Joint Clearing Member and apply any proceeds against the obligations of the Joint Clearing Member to ICC. Accordingly, section 29 of Article VI of the By-laws provides that a Joint Clearing Member that elects cross-margining shall be deemed to have assigned cross-margined positions in its OCC firm account to ICC. OCC will credit these positions to an ICC account on OCC's books. ICC will, in turn, credit these positions to the Joint Clearing Member's firm account on ICC's books. If the Joint Clearing Member should default in its obligations to ICC, ICC would have exclusive control over these cross-margined positions and would have the right to liquidate them and apply any proceeds in accordance with ICC's Rules.

²⁰ The Joint Clearing Member will make no clearing fund deposit at OCC with respect to its cross-margined positions. The Joint Clearing Member will contribute to the ICC clearing fund based upon its outstanding positions at ICC during the preceding month and average daily ICC aggregate margin requirements, including the margin required on cross-margined positions. The clearing fund contribution at ICC is the greater of \$25,000 or the Joint Clearing Member's proportionate share of an amount equal to 7% of the average daily aggregate margin requirements with respect to all options and futures contracts outstanding during the preceding calendar month. See ICC Rule 301(c).

The relationship between ICC and OCC will be governed by an Intermarket Margining Agreement ("IMA" or "Agreement") between OCC and ICC. Under the IMA, ICC will have the authority and responsibility to value cross-margined positions and set margin levels. ICC will not be required to deposit margin with OCC on short option positions, nor will OCC be required to pay a premium to ICC for long option positions. Each clearing organization therefore will be relying upon the safeguarding systems of the other.²¹ Because ICC, and not OCC, will hold all margin and clearing fund deposits for cross-margined positions. OCC must look to ICC for performance of the obligations of a defaulting Joint Clearing Member on its cross-margined option positions. Accordingly, the Agreement provides that ICC will meet all premium and exercise settlement obligations of a failed Joint Clearing Member in respect of such positions.²² In the event that the margin and clearing fund deposits of the defaulting member are insufficient to cover any loss, ICC rules authorize, and the IMA contemplates, a *pro rata* assessment of ICC members' clearing fund deposits.²³

To illustrate, assume that a Joint Clearing Member with cross-margined positions defaults at either OCC or ICC. Upon suspension of that Joint Clearing Member at either OCC or ICC, ICC would liquidate the Joint Clearing Member's positions at ICC, including the cross-margined options and futures positions carried in the Joint Clearing Member's proprietary account.²⁴ ICC

²¹ ICC's safeguarding systems are substantially identical to those of OCC. For example, in addition to margin deposits, ICC requires its clearing members to meet special capital requirements and to contribute to a clearing fund that, in addition to each member's margin deposits, collateralizes the obligations of all ICC clearing members. Because ICC's entire safeguarding system stands behind its obligations to OCC, OCC should be in a better position than if its only security for cross-margined positions was the margin and clearing fund deposits of a single clearing member.

²² The margin and clearing fund deposits of the Joint Clearing Member held by ICC are designed to be sufficient to cover those obligations.

²³ The defaulting Joint Clearing Member will remain liable to ICC for any loss incurred by ICC in liquidating cross-margined positions.

²⁴ The Commission believes that current ICC rules provide ICC with the flexibility to determine to defer liquidation of a defaulting Joint Clearing Member's positions. Nevertheless, ICC has represented that it intends to file rule changes with the CFTC and the SEC that would clarify ICC's authority in this regard. OCC currently has such a rule change pending with the SEC. See Securities Exchange Act Release No. 25576 (April 11, 1988), 53 FR 12842.

project the cost of liquidating a member's portfolio of options and futures positions in the event of an assumed "worst-case" one-day change in the price of the underlying interest. ICC margin requirements are equal to the sum of the margin requirement for futures spreads, the margin requirement of credit for option contracts and unspread futures, and an additional margin amount. That additional margin amount is calculated by determining assumed maximum one-day price movements in the underlying interests (the "margin interval") based on historical volatility. The margin interval is set at a level where, based on historical rates of change, a close-to-close change in the underlying asset value greater than the interval would occur less than 10% of the time. ICC represents that current margin interval levels are in fact yielding enough margin to cover a price movement equal to or exceeding at least 95% of the daily price changes in the underlying asset; and ICC, at the request of Commission staff, has changed the "confidence level" to 95%. ICC uses the margin interval to project the effect of such movements (up, down, and at any price falling between) on the liquidating value of the positions on the basis of options pricing models. Any projection reflecting an increase in liquidating cost or a decrease in liquidating value results in the additional margin requirement.

¹⁹ The Joint Clearing Member would have paid the full premium on the long options position and ICC would maintain a lien over those options. Without cross-margining, the Joint Clearing Member would have been required to post original margin of \$1,500 at ICC and to pay a premium of \$3,190 at OCC, for a total of \$4,690.

would be required to meet all settlement obligations of the suspended Joint Clearing Member at OCC arising out of cross-margined positions. If the Joint Clearing Member's margin and clearing fund deposit at ICC are insufficient to cover these obligations, ICC would assess its clearing fund or elect to charge the deficiency, in whole or in part, to ICC's retained earnings.²⁵

Further, assume that because of the Joint Clearing Member's default, ICC fails to meet its settlement obligations at OCC. OCC would notify ICC of termination of the IMA.²⁶ Upon termination, all cross-margined positions would cease to be treated as cross-margined positions and would be reassigned from ICC to OCC for the respective Joint Clearing Members from whose accounts such positions were assigned to ICC.²⁷ At that point, non-defaulting Joint Clearing Members could avoid liquidation of their OCC positions by depositing margin with OCC on the positions which previously had been cross-margined at ICC.

The proposed addition to paragraph (c) of Article VIII, section 5 of the OCC By-laws is intended to make clear that, in the event that ICC should become insolvent and unable to perform its obligations to OCC on cross-margined positions, the OCC clearing funds could be applied against any resulting loss.

III. OCC's Rationale for the Proposed Rule Change

OCC believes that cross-margining is consistent with section 17A of the Act because it should promote the prompt and accurate clearance and settlement of securities transactions. OCC states in its filing that the proposed cross-margining system eliminates unnecessary and duplicative margin requirements and promotes intermarket hedging by reducing the amount of margin required to be deposited on hedged positions. For example, ICC supplied information to the Commission suggesting that, for one Joint Clearing Member, reductions in original margin during October 19-30, 1987, would have ranged from 37%-100%.

OCC also believes that cross-margining eliminates potential settlement problems associated with the maintenance of large intermarket hedge positions. For example, OCC notes that

if a clearing firm carries the two legs of an intermarket hedge with different clearing organizations, a sharp price movement in the underlying interest may generate original or variation margin obligations to one clearing organization that cannot be met except out of funds receivable from the other, e.g. in a rising market variation margin payments on a long futures position may be used to meet margin obligations to a short option position. The time required to receive funds from one clearing organization and transfer funds to the other could lead to temporary settlement defaults, possibly affecting a clearing organization's own ability to make timely settlement. Under a cross-margining system, many such problems would be eliminated because both legs of the hedge will be margined at the same clearing organization.

Finally, OCC believes cross-margining enhances the security of its clearing system. OCC states that an inherent weakness of margin systems is that they involve depositing cash or other assets of fixed value to cover obligations whose liquidation cost may be highly volatile. Although a properly constructed cash margin system can be designed to provide a sufficient cushion to protect a clearing organization against reasonably foreseeable fluctuations in the cost of liquidating a member's positions, no workable margin system based on cash or other fixed-value assets can be expected to protect fully against all extraordinary price movements. In contrast, where an obligation is fully hedged by a position on the other side of the market, a decrease in value of one leg of the hedged position should be offset by a corresponding increase in the value of the other leg of the hedge. Of course, any such hedge involving a future and an option retains a certain amount of risk because of liquidation risks and the fact that options hedge relationships vary with changes in the volatility of the option. Nevertheless, this exposure is substantially less in a volatile market than a single unhedged position. OCC believes that concentrating both legs of intermarket hedge positions in a single clearing organization would thus reduce the overall risk of the securities/commodities clearing system in the event of a clearing firm's default.

IV. Discussion

The Commission believes that the proposed cross-margining system is consistent with the Act, and section 17A in particular, and therefore is approving the proposal. As discussed below, the Commission believes that the proposal should promote the prompt and accurate

clearance and settlement of securities transactions and is designed to assure the safeguarding of funds and securities in OCC's possession or for which it is responsible. Specifically, the Commission believes that the ICC and OCC consolidated cross-margin system is prudently designed to protect both clearing organizations from member defaults in connection with intermarket hedging. As discussed below, the proposal should increase protections to ICC and OCC by providing for netting of various Joint Clearing Member obligations. Moreover, by substituting complementary assets for cash or other fixed-value margin assets the proposal is designed to provide a method to protect against even the most extreme market movements. Finally, the Commission believes that the proposed cross-margining system can reduce original margin for Joint Clearing Members and ease cash flow problems in the securities and commodities markets without increasing risk to OCC.

Various recent reports on financial markets and the events of October 1987 suggest that the failure of current clearing mechanisms to recognize hedged positions across markets for margin purposes can result in severe pressure on the markets.²⁸ Even in instances where institutions were fully hedged across markets, they were forced to meet continually higher margin requirements at all clearing organizations during October. For example, original margin requirements on some futures positions increased by more than 100% during the week of October 19, 1987.²⁹ That increase in margin requirements may have reduced significantly the ability of some market participants to assume options positions that under normal conditions would be hedged through the futures market. The reports generally concluded that a cross-margining system would facilitate intermarket hedging by minimizing liquidity demands on hedged positions, and called for implementation of a cross-margining system for proprietary accounts.³⁰

The Commission believes that clearing organizations can benefit from the cross-margining proposal. Specifically, the Commission believes

²⁵ See ICC Rule 302(d).

²⁶ See IMA Paragraph 7(c).

²⁷ See IMA Paragraph 7(d). Because ICC has made no margin or clearing fund deposit at OCC, OCC clearing funds could be assessed for any resulting shortfall after liquidation of the defaulting Joint Clearing Member's cross-margined positions at ICC. This would occur, however, only after the entire ICC clearing fund had been exhausted.

²⁸ See Market Break Report, *supra*, note 8, at 8-18 and 10-56; Report of the Presidential Task Force on Market Mechanisms (January 1988) ("Brady Report") at 64; and The Interim Report of the Working Group on Financial Markets (May 1988) ("Working Group Report") at 10.

²⁹ See, Market Break Report at 8-19.

³⁰ See, e.g., Market Break Report at 10-56; Brady Report at 64; and Working Group Report, Appendix D, at 11.

cross-margining may reduce the risk to clearing organizations in the event of member defaults in connection with intermarket hedging. Under current clearing procedures, gains on futures positions or proceeds from the exercise of long options can be used to offset short option margin requirements or futures losses. Such gains or proceeds, however, must first be paid to the clearing member at one clearing organization and then transferred by the clearing member to another clearing organization. During that time, a clearing member defaulting at one clearing organization could divert gains or proceeds received at another clearing organization away from the clearing organization where the obligation is due. Under the proposal, such obligations would be netted and thereby applied to obligations to the clearing organization.

The Commission also believes that a clearing organization's exposure from member default may be reduced through a margin system comprised of complementary assets. The Working Group recently agreed that, because margin levels sufficient to provide protection against all possible price movements would impose unacceptable costs to market participants and the liquidity and efficiency of the markets, means other than margins should be considered to protect against extreme price movements.³¹ In addition to those mechanisms currently in place, e.g., capital requirements, clearing fund deposits and intra-day variation margin payments, the Commission believes that a margin system comprised of complementary assets may add protections to the clearing organization from extreme price movements. This is so because, regardless of how extreme the price movement is, losses on one leg of a hedged position can be offset, at least in part, by gains on the other leg. In contrast, it would be difficult to envision a realistic amount of cash margin to assure that the clearing organization will be protected against the most extreme price movements.

The Commission notes, however, that a cross-margin system entails risks. The Commission recognizes that, even in normal market conditions, the prices of products that historically have moved in tandem may diverge, for a variety of reasons, such that the long and short legs of a cross-product hedge would be liquidated at such discrepant prices that a loss to the clearing organization could result. The Commission believes that ICC's margin system recognizes and takes such potential discrepancies into

account by providing a haircut for margin credits across product groups.³²

Nevertheless, the Commission believes it is important that ICC ensure that price correlations among Class Groups continue to be sufficient to warrant cross-margining. The Commission understands that ICC formally reviews correlation coefficients for Product Group components at least monthly. ICC represents that its Market Surveillance Group monitors the Product Group components daily and, in the event that price correlations begin to break down, will institute a formal review more often than monthly when market conditions dictate. If the correlation changes, ICC adjusts Product Group percentages accordingly, or if the coefficients of determination fall below 70%, ICC changes the composition of the Product Group.

The Commission also recognizes that under the proposal it is possible that certain offsetting positions will result in no original margin requirement for the Joint Clearing Member at ICC. Given the liquidation risks involved in closing out both legs of an intermarket hedge position, elimination of all margin may be inappropriate. Accordingly, the Commission has directed ICC and OCC to monitor those instances that result in no, or substantially reduced, original margin requirements, to evaluate associated risks, and to consider alternative safeguards.³³ The

³² The Commission notes that the Product Group percentage, or haircut, is based on the lowest coefficient of determination among Class Groups within the Product Group over the most recent three-month or one-year period. The coefficient of determination, known in statistical terms as "r²", yields a more conservative result than the correlation coefficient, or "r", measure. For example, the Product Group percentage for the broad-based indexes Product Group currently is 85%, i.e., Class Group margin credits are haircut 15%, indicating a correlation coefficient of approximately 92%.

³³ ICC and OCC have agreed to provide data on instances where clearing members would have no, or substantially reduced, original margin requirements during the first six months of pilot program operations. ICC and OCC also have agreed to estimate any liquidation loss on such positions and whether such a liquidation loss could be avoided by maintaining the hedge and delaying liquidation. In addition, ICC and OCC have agreed to provide a similar analysis of how cross-margining would have performed during October/November 1987 where, because of the nature of the hedge, little or no original margin would have been collected. Additionally, during the pilot cross-margining program, in order to assist the Commission in assessing the benefits of proprietary cross-margining, ICC has agreed to provide the Commission with periodic reports detailing (1) the number of Joint Clearing Members using cross-margining, (2) the extent of their use, (3) significant samples illustrating the effects of that use on margin and aggregate clearing fund requirements, (4) the effect on cash flow (i.e., a comparison of variation settlement requirements with margin reductions due to cross-margining), and (5) a description of the

Commission also notes that ICC collects clearing fund deposits from all members and has the ability, at any time, to call for additional cash margin through its variation margin call procedure.³⁴

The Commission believes that the cross-margining system would benefit Joint Clearing Members in several ways. Recognition of intermarket hedges will reduce certain original margin requirements of Joint Clearing Members and may reduce or eliminate the need to increase that margin in unusual market conditions. For instance, in the example set out above (see pg. 10), the Joint Clearing Member would have been required to post no original margin with ICC on the YXZ future/NYA put options cross-margined position. Without cross-margining, the Joint Clearing Member would have had to post \$1,500 original margin at ICC.³⁵ The Commission emphasizes that the margin reductions involve only original margin, but, as discussed more fully below, because ICC recomputes original margin requirements on the combined position each day, it may have the effect of reducing variation margin payments.

The Commission believes that the margin reductions that would result under the proposal will not adversely affect OCC's ability to safeguard securities and funds in its control or for which it is responsible. In the event of a default by a Joint Clearing Member, ICC will be required to meet the Joint Clearing Member's obligations to OCC with respect to cross-margined positions. The Joint Clearing Member's obligations are secured by its margin and clearing fund deposit at ICC, as well as by ICC's entire safeguarding system. Although ICC will hold less cash margin, it will have variable-asset protection from member defaults in the form of offsetting positions. Additionally, in

circumstances surrounding any instance in which a Joint Clearing Member holding cross-margined positions defaults in its obligations and the steps taken by ICC in response. In addition, ICC will provide the Commission with such data following any case of extreme market volatility in a cross-margined product.

³⁴ See ICC Rule 511. Additionally, as discussed above, ICC rules currently provide some flexibility with respect to the timing of liquidation of a defaulting clearing member's positions.

The Commission also notes that proprietary cross-margining will have no effect on the net capital requirements of Joint Clearing Members, and net capital will continue to be computed as it is in the absence of cross-margining, providing some additional safety. Nevertheless, the Commission acknowledges that the role of net capital as a clearing organization safeguard historically has been secondary and should not be considered a first line of defense against clearing member default at a clearing organization.

³⁵ The original margin required on the YXZ future today is \$4,000.

³¹ See Working Group Report at 5.

light of the Commission's consideration and approval of OCC's NEO margin system³⁶ which is virtually identical to the ICC margin system, and pending completion of OCC's sub-committee report, the Commission is satisfied that the margin collected on cross-margined positions is designed prudentially to protect ICC, and thereby, OCC, from losses due to member defaults.

Nevertheless, the Commission notes that OCC experienced a number of problems during the market break that could affect the safety and efficiency of a cross-margining system. For example, the Market Break Report indicates that OCC had difficulty obtaining and verifying daily options marketing prices and last sale information from its price reporting vendor.³⁷ The Commission understands that OCC has taken steps to respond to pricing problems including reduced reliance on outside vendors and enhancements to its price editing program to identify errors. The Market Break Report recommended that OCC, in light of the unprecedented price volatility in October 1987, re-examine all aspects of its operations to re-affirm their adequacy or identify changes needed in response to events in October.³⁸ The Commission looks forward to the report of the special industry sub-committee and expects that OCC will take the steps necessary to deal safely with more volatile markets.

The Commission recognizes that because of the different settlement systems in the stock, options, and futures markets,³⁹ hedged positions

consisting of options and futures may still require financing to meet variation margin calls at the clearing organizations. However, the Commission notes that, because cross-margining is based on combined options and futures positions, original margin requirements are recalculated each day based on the new risk configuration. This could, in effect, reduce variation margin requirements, because ICC rules provide that excess original margin in an account can be applied against net variation margin payments due to ICC for the same account.⁴⁰ The Commission believes that potential margin reductions in a Joint Clearing Member's financing needs should ease liquidity problems such as those experienced during October 1987. For example, the table attached as Exhibit B supplied by OCC illustrates the financing needs of a Joint Clearing Member, with and without cross-margining, on the hypothetical hedged position set out above.

The Commission also believes that the ability to cross-margin hedged positions would ease some of the problems associated with uncoordinated settlement times at options and futures clearing organizations by reducing cash flows between clearing organizations. For example, both the Market Break Report and the CFTC reports⁴¹ on the October 1987 market break identify instances in which options and futures settlements did not occur within normal time frames. In some cases, a delayed "collect" at one clearing organization

precluded a clearing member's "pay" at another clearing organization. At that time, delays continued while clearing banks, faced with drafts on their customers' accounts, assessed the collateralization and creditworthiness of those clearing member customers. The ability to cross-margin hedged positions would alleviate some of these problems by eliminating cash flows between ICC and OCC on cross-margined positions. In this connection the Commission notes that the Working Group concluded that "efforts to explore measures that could reduce the size of net cash flow obligations should be a priority."⁴² The Working Group specifically recommended that the SEC and CFTC expedite consideration of rule proposals establishing a pilot program for cross-margining house positions and encourage other clearing organizations to consider proprietary cross-margining pilot programs for products such as stock index options and futures.⁴³

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR-OCC-86-17) be, and hereby is, approved.

By the Commission.

Jonathan G. Katz,
Secretary.

Dated: October 3, 1988.

EXHIBIT A

Contract	Exchange ¹	Clearing-house	Class group	Product group
Deutsche mark futures.....	PBOT	ICC	Deutsche mark.....	Continental currencies.
Deutsche mark options.....	PHLX	OCC	do.....	Do.
French franc futures.....	PBOT	ICC	French franc.....	Do.
French franc options.....	PHLX	OCC	do.....	Do.
Swiss franc futures.....	PBOT	ICC	Swiss franc.....	Do.
Swiss franc options.....	PHLX	OCC	do.....	Do.
European currency unit options.....	PHLX	OCC	European currency unit.....	Do.
European currency unit futures.....	PBOT	ICC	do.....	Do.
British pound futures.....	PBOT	ICC	British pound.....	None.
British pound options.....	PHLX	OCC	do.....	Do.
Japanese yen futures.....	PBOT	ICC	Japanese yen.....	Do.
Japanese yen options.....	PHLX	OCC	do.....	Do.
Canadian dollar futures.....	PBOT	ICC	Canadian dollar.....	Do.
Canadian dollar options.....	PHLX	OCC	do.....	Do.
Australian dollar futures.....	PBOT	ICC	Australian dollar.....	Do.
Australian dollar options.....	PHLX	OCC	do.....	Do.

³⁶ See note 8, *supra*.

³⁷ See Market Break Report, *supra*, note 8, at 10-39.

³⁸ *Id.* at 10-49.

³⁹ As noted above, futures positions pay and collect profits and losses on a daily basis; long options and stock may rise and fall in value, but generally do not result in daily cash pay or collect obligations.

⁴⁰ See ICC Rule 509.

⁴¹ See, e.g., Follow-up Report on Financial Oversight of Stock Index Futures Markets During October 1987, CFTC (January 6, 1988).

⁴² *Supra*, note 25, Appendix D, at 11. In response to this recommendation by the Working Group, the Chicago Board of Trade recently submitted to the CFTC a Petition for Rulemaking that would enable clearing organizations to switch from securities-style margining for options on futures to futures-style margining. That Petition suggests that with

futures-style margining for futures options in place, a gain or loss on a futures contract side of a hedged position would be netted with the gain or loss on the futures option side of a hedge by the clearing organization without a margin call being made. The Chicago Mercantile Exchange also is considering adopting the same type of margining system for its options on futures products. See Securities Week, May 23, 1988, at 9.

⁴³ *Supra*, note 25, Appendix D, at 10.

EXHIBIT A—Continued

Contract	Exchange ¹	Clearing-house	Class group	Product group
NYSE composite index futures.....	NYFE	ICC	NYSE composite index.....	Broad-based indexes.
NYSE composite index options.....	NYFE	ICC	do.....	Do.
Do.....	NYSE	OCC	do.....	Do.
Russell 2000 index.....	NYFE	ICC	None.....	Do.
Russell 3000 index.....	NYFE	ICC	do.....	Do.
S&P 100 index options.....	CBOE	OCC	do.....	Do.
S&P 500 index options.....	CBOE	OCC	do.....	Do.
Major market index options.....	Amex	OCC	do.....	Do.
Institutional index options.....	Amex	OCC	do.....	Do.
Financial News composite index options.....	PSE	OCC	do.....	Do.

¹ Exchange abbreviations not previously identified are as follows: American Stock Exchange ("Amex"), Chicago Board Options Exchange ("CBOE"), Philadelphia Stock Exchange ("Phlx"), Philadelphia Board of Trade ("PBOT"), and Pacific Stock Exchange ("PSE").

EXHIBIT B

Trade date	Settle date	Position	Settle price	ICC margin requirement	Long option value	Cross-margin requirement	ICC variation margin settlement	Financing needs without cross-margin	Financing needs with cross-margin	Financing needs percent reduction
10/14	10/15	1 L XYZ ¹	\$171.15	\$1,500.00		\$2,925.00	\$4,425.00	0	\$2,925.00	34
		5 L NYA ² Dec. 170 Puts.....	6.38		\$3,190.00					
10/15	10/16	1 L XYZ.....	167.40	1,500.00		0	1,875.00	3,375.00	1,875.00	44
		5 L NYA Dec. 170 Puts.....	7.88		3,940.00					
10/16	10/19	1 L XYZ.....	158.80	1,750.00		0	4,300.00	6,050.00	4,300.00	29
		5 L NYA Dec. 170 Puts.....	14.50		7,250.00					
10/19	10/20	1 L XYZ.....	115.00	4,000.00		0	21,900.00	25,900.00	21,900.00	15
		5 L NYA Dec. 170 Puts.....	57.00		28,500.00					

¹ New York Stock Exchange Composite Index Future.

² New York Stock Exchange Composite Index Options.

[FR Doc. 88-23166 Filed 10-6-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 3, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

- Federal-Mogul Corporation
Common Stock, \$5 par value (File No. 7-3927)
- Central Hudson Gas & Electric Corp.
Common Stock, \$5 par value (File No. 7-3928)
- Comstock Partners Strategy Fund, Inc.
Common Stock, \$0.001 par value (File No. 7-3929)
- Cooper Tire & Rubber Company
Common Stock, \$1 par value (File No. 7-3930)
- Environmental Systems Company
Common Stock, \$0.01 par value (File No. 3931)
- TCBY Enterprises, Inc.
Common Stock, \$0.01 par value (File No. 3932)

United States Surgical Corporation
Common Stock, \$0.10 par value (File No. 3933)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 24, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23169 Filed 10-6-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending September 30, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45847

Date Filed: September 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 24, 1988.

Description: Application of Vacationair Inc. pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit to authorize it to engage

in foreign charter air transportation of persons and property between a point or points in Canada and a point or points in the United States.

Docket No. 45852

Date Filed: September 29, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 27, 1988.

Description: Application of Austrian Airlines, pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to authorize applicant to engage in foreign air transportation between all points in Austria and New York, New York and between all points in Austria via an intermediate point to Chicago, Illinois.

Docket No. 45854

Date Filed: September 29, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 27, 1988.

Description: Application of Interestat De Aviacion, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in non-scheduled and charter air transportation of cargo and mail between points in Mexico, on the one hand, and points in the United States, on the other hand.

Docket No. 45856

Date Filed: September 30, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 28, 1988.

Description: Application of Air 2000 Airlines Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in foreign charter air transportation of persons and property between a point or points in Canada, including Toronto, and a point or points in the United States.

Docket No. 45780

Date Filed: September 28, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope:

Description: Competing Application of Alaska Airlines, Inc. with respect to Docket 45728, submits this application in the form of Amendment No. 1 to its pending Los Angeles, California-San Jose del Cabo, Mexico application, requesting a certificate of public convenience and necessity to operate scheduled service between the following cities in California—Los Angeles, San Francisco, Oakland and San Jose, on the one hand, and the following cities in Mexico—Mazatlan, Puerto Vallarta, Guadalajara, Manzanillo, Mexico City/

Toluca, Zinhuatanejo, Acapulco, and Huatulco. In addition, Alaska requests certificate authority between Los Angeles, Oakland, San Jose, California-Loreto, La Paz and San Jose del Cabo, Mexico. This Amendment No. 1 is being filed pursuant to the invitation set forth in Orders 88-7-43 and 88-8-67.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-23141 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-52-M

Federal Highway Administration

Environmental Impact Statement; Fairbanks, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this action to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Fairbanks, Alaska.

FOR INFORMATION CONTACT:

Thomas Neunaber, Field Operations

Engineer, Federal Highway

Administration, P.O. Box 21648,

Juneau, Alaska 99802-1648.

Telephone: (907) 586-7428.

Michael Tinker, Regional Environmental Coordinator, Department of Transportation and Public Facilities, 2301 Peger Road, Fairbanks, Alaska 99709-5316, Telephone: (907) 451-2238.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities, will prepare an Environmental Impact Statement (EIS) on a proposal to improve an urban street in Fairbanks, Alaska. The proposed improvement would involve widening and reconstruction of approximately one mile of Minnie Street and 3rd Street, Graehl (Federal-Aid Project No. RS-M-0634(3)) between Illinois Street and Hamilton Avenue.

The proposal includes upgrading the existing two and three-lane facility to four lanes with turn lanes as appropriate. Intersections will be realigned and upgraded. The proposed project is recommended in the Fairbanks Metropolitan Area Transportation Study and it is needed in conjunction with the proposed Geist Road—Minnie Street Connector (Project No. F-M-0663(04)).

Alternatives under consideration include (1) taking no action, (2) widening Minnie Street and 3rd Street to the north, (3) widening to the south and (4) widening to the north in some places and to the south in others.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens believed to have an interest in the proposed project. No formal scoping meeting is planned, since the issues are well known. A public hearing will be held after the Draft Environmental Impact Statement has been completed and made available for public and agency review and comment.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the Environmental Impact Statement should be directed to the Alaska Department of Transportation and Public Facilities at the address noted above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on September 27, 1988.

Barry Morehead,

Division Administrator, Federal Highway Administration.

[FR Doc. 88-23198 Filed 10-6-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0183.

Form Number: 4789.

Type of Review: Extension.

Title: Currency Transaction Report.

Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than \$10,000. The information is used to check tax compliance.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,500,000.

Estimated Burden Hours Per Response: 41 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,720,458 hours.

OMB Number: 1545-0712

Form Number: 6198.

Type of Review: Revision.

Title: Computation of Deductible Loss From an Activity Described in section 465(c).

Description: Internal Revenue Code section 465 requires taxpayers to limit their at risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 66,596.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—1 hour 12 minutes

Learning about the law or the form—1 hour 1 minute

Preparing the form—1 hour 5 minutes

Copying, assembling, and sending the form to IRS—20 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 242,409 hours.

OMB Number: 1545-0892

Form Number: 8300.

Type of Review: Revision.

Title: Report of Cash Payments Over \$10,000 Received in a Trade or Business.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than \$10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payer. Any transaction which must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Farms, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations.

Estimated Number of Respondents: 8,300.

Estimated Burden Hours Per Response/Recordkeeping: 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden/Recordkeeping: 8,415 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-23143 Filed 10-6-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 3, 1988.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0895.

Form Number: 3800.

Type of Review: Resubmission.

Title: General Business Credit.

Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credit carryforward. Form 3800 is used to figure the correct credit.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 200,000.

Estimated Burden Hours Per Response:

Recordkeeping—10 hours 17 minutes

Learning about the law or the form—7 hours 30 minutes

Preparing the form—25 hours 41

minutes

Copying, assembling, and sending the form to IRS—5 hours 5 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 9,710,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-23144 Filed 10-6-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0103.

Form Number: None.

Type of Review: Extension.

Title: Request for Internal Advice or Administrative Ruling (19 CFR 177.2, 177.11).

Description: Sections 177.2 and 177.11 of the Customs Regulations provide for submission of ruling requests on tariff classification, valuation, or carriers. The information contained in the request is required in order to prepare a reply to the requester for specific Customs information on these subjects.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 9,090.

Estimated Burden Hours Per Respondent: 4 hours and 34 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden:

41,526 hours.

OMB Number: 1515-0148.**Form Number:** CF 331.**Type of Review:** Extension.**Title:** Manufacturing Drawback Entry and/or Certificate.**Description:** This form serves as an entry, a certificate of manufacture and delivery (or the combination), or a certificate of imported merchandise, necessary in the filing of a claim for a refund of duty and/or Internal Revenue tax paid.**Respondents:** Individuals or households, Businesses or other for-profit, Small businesses or organizations.**Estimated Number of Respondents/Recordkeepers:** 3,500.**Estimated Burden Hours for Respondents/Recordkeepers:** 20 minutes.**Frequency of Response:** On occasion.**Estimated Total Reporting Burden:** 124,998 hours.**Clearance Officer:** B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.**Lois K. Holland,***Departmental Reports Management Officer.*

[FR Doc. 88-23145 Filed 10-6-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 3, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms**OMB Number:** 1512-0390.**Form Number:** ATF Form 5020.29.**Type of Review:** Extension.**Title:** Request for Disposition of Offense.**Description:** The information provided on this form determines whether an

applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the custodian of records to ascertain the disposition of the case.

Respondents: State or local governments.**Estimated Number of Respondents:** 3,000.**Estimated Burden Hours Per Response:** 30 minutes.**Frequency of Response:** On occasion.**Estimated Total Reporting Burden:** 1,500 hours.**Clearance Officer:** Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.**Lois K. Holland,***Departmental Reports Management Officer.*

[FR Doc. 88-23146 Filed 10-6-88; 8:45 am]

BILLING CODE 4810-25-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**Generalized System of Preferences (GSP); Review of Timex Corp. Petition and Public Hearings**

SUMMARY: The purpose of this notice is to announce the acceptance for review of the petition filed by Timex Corporation to add watches to the list of GSP eligible products and to announce the timetable for public hearings on this petition.

I. Acceptance of the Timex Corporation Petition for Review

Notice is hereby given of acceptance for review of the Timex Corporation's petition requesting the addition of watches to the list of GSP eligible items as provided for in Title V of the Trade Act of 1974 (the Act) (19 U.S.C. 2461-2465). This petition was submitted, and will be reviewed, pursuant to regulations codified at 15 CFR Part 2007.

Pursuant to the Omnibus Trade and Competitiveness Act of 1988, (HR 4848, 100th Congress, 2nd Session Sec. 1903 [1988]), "those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band,

strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions," can now be considered for GSP eligibility. The Office of the United States Trade Representative is charged with conducting the review and making recommendations to the President.

Acceptance for review of the petition listed herein does not indicate any opinion with respect to a disposition on the merits of the petition. Acceptance indicates only that the listed petition has been found to be eligible for review by the GSP Subcommittee and the Trade Policy Staff Committee (TPSC), and that such review will take place.

1. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or nonconfidential").

Requests to present oral testimony at the public hearings should be submitted to the GSP Information Center by Monday, October 17, and should include the name, address and telephone number of the witness(es) representing each interested party. Twenty copies, in English, of all written briefs or statements should be received by the Chairman of the GSP Subcommittee no later than the close of business Monday, November 7. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Monday, January 30, 1989. Rebuttal briefs should be submitted in twenty copies, in English, by close of business Monday, February 20, 1989.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles under consideration in public hearings, provided that such submissions are filed by Monday, January 30, 1989, and comply with regulations cited above.

On behalf of the President and in accordance with sections 503(A) and 131(A) of the Trade Act of 1974 as amended, the United States International Trade Commission is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on

the probable economic effect on US industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP.

Sandra J. Kristoff,
Chairwoman, Trade Policy Staff Committee.

ANNEX—PETITION ACCEPTED FOR REVIEW

Case No.	HTS subheading ¹	Article	Petitioner
Petition To Add Products to the List of Eligible Articles for the Generalized System of Preferences			
	9101	Wrist watches, pocket watches and other watches, including stop watches, with case of precious metal or of metal clad with precious metal:	
		Wrist watches, battery powered, whether or not incorporating a stop watch facility:	
	9101.11	With mechanical display only:	
88-HS-20	9101.11.40	Having no jewels or only one jewel in the movement.....	Time Corp. Waterbury, CT.
88-HS-21	9101.11.80	Other	Do.
88-HS-22	9101.12.00	With opto-electronic display only	Do.
	9101.19	Other:	
88-HS-23	9101.19.40	Having no jewels or only one jewel in the movement.....	Do.
88-HS-24	9101.19.80	Other	Do.
		Other wrist watches, whether or not incorporating a stop watch facility:	
	9101.21	Having over 17 jewels in the movement	Do.
88-HS-25	9101.21.40	Other	Do.
88-HS-26	9101.21.80	Other:	
	9101.29	Having no jewels or only one jewel in the movement.....	Do.
88-HS-27	9101.29.10	Having over 1 jewel but not over 7 jewels in the movement	Do.
88-HS-28	9101.29.20	Having over 7 jewels but not over 17 jewels in the movement:	
		With movement valued not over \$15 each:	
88-HS-29	9101.29.30	With movement measuring not over 15.2 mm	Do.
88-HS-30	9101.29.40	With movement measuring over 15.2mm	Do.
88-HS-31	9101.29.50	With movement value over \$15 each	Do.
88-HS-32	9101.29.60	Having over 17 jewels in the movement	Do.
		Other:	
	9101.91	Battery powered:	
88-HS-33	9101.91.20	With opto-electronic display only.....	Do.
		Other:	
88-HS-34	9101.91.40	Having no jewels or only one jewel in the movement	Do.
88-HS-35	9101.91.80	Other	Do.
	9101.99	Other:	
88-HS-36	9101.99.20	Having no jewels or not over 7 jewels in the movement.....	Do.
		Having over 7 but not over 17 jewels in the movement:	
88-HS-37	9101.99.40	With movement valued not over \$15 each	Do.
88-HS-38	9101.99.60	With movement valued over \$15 each	Do.
88-HS-39	9101.99.80	Having over 17 jewels in the movement	Do.
	9102	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101:	
		Wrist watches, battery powered, whether or not incorporating a stop watch facility:	
	9102.11	With mechanical display only:	
		Having no jewels or only one jewel in the movement:	
88-HS-40	9102.11.10	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated:	
88-HS-41	9102.11.25	With gold- or silver-plated case.....	Do.
		Other	Do.
		Other:	
88-HS-42	9102.11.30	With gold- or silver-plated case.....	Do.
88-HS-43	9102.11.45	Other	Do.
		Other:	
		With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated:	
88-HS-44	9102.11.50	With gold- or silver-plated case.....	Do.
88-HS-45	9102.11.65	Other	Do.
		Other:	
88-HS-46	9102.11.70	With gold- or silver-plated case.....	Do.
88-HS-47	9102.11.95	Other	Do.
88-HS-48	9102.12.00	With opto-electronic display only	Do.
	9102.19	Other:	
		Having no jewels or only one jewel in the movement:	
88-HS-49	9102.19.20	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-50	9102.19.40	Other	Do.
		Other:	
88-HS-51	9102.19.60	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-52	9102.19.80	Other	Do.

ANNEX—PETITION ACCEPTED FOR REVIEW—Continued

Case No.	HTS subheading ¹	Article	Petitioner
	9102.21	Other wrist watches, whether or not incorporating a stop watch facility:	
		With automatic winding:	
		Having no jewels or only one jewel in the movement:	
88-HS-53	9102.21.10	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-54	9102.21.25	Other.....	Do.
		Having over one jewel but not over 17 jewels in the movement:	
88-HS-55	9102.21.30	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-56	9102.21.50	Other.....	Do.
		Having over 17 jewels in the movement:	
88-HS-57	9102.21.70	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-58	9102.21.90	Other.....	Do.
	9102.29	Other:	
		Having no jewels or only one jewel in the movement:	
88-HS-59	9102.29.05	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-60	9102.29.10	Other.....	Do.
		Having over one jewel but not over 7 jewels in the movement:	
88-HS-61	9102.29.15	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	
88-HS-62	9102.29.20	Other.....	Do.
		Having over 7 but not over 17 jewels in the movement:	
		With movement valued not over \$15 each:	
		With movement measuring not over 15.2mm:	
88-HS-63	9102.29.25	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-64	9102.29.30	Other.....	Do.
		With movement measuring over 15.2 mm:	
88-HS-65	9102.29.35	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-66	9102.29.40	Other.....	Do.
		With movement valued over \$15 each:	
88-HS-67	9102.29.45	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-68	9102.29.50	Other.....	Do.
		Having over 17 in the movement:	
88-HS-69	9102.29.55	With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated.	Do.
88-HS-70	9102.29.60	Other.....	Do.
	9102.91	Other:	
		Battery powered:	
88-HS-71	9102.91.20	With opto-electronic display only.....	Do.
		Other:	
88-HS-72	9102.91.40	Having no jewels or only one jewel in the movement.....	Do.
88-HS-73	9102.91.80	Other.....	Do.
	9102.99	Other:	
88-HS-74	9102.99.20	Having no jewels or not over 7 jewels in the movement.....	Do.
		Having over 7 but not over 17 jewels in the movement:	
88-HS-75	9102.99.40	With movement valued not over \$15 each.....	Do.
88-HS-76	9102.99.60	With movement valued over \$15 each.....	Do.
88-HS-77	9102.99.80	Having over 17 jewels in the movement.....	Do.

¹ Harmonized Tariff Schedule of the United States (USITC publication 2030).

Sunshine Act Meetings

Federal Register

Vol. 53, No. 195

Friday, October 7, 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).

COMMISSION ON CIVIL RIGHTS

October 14, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 516, Washington, DC 20425.

DATE AND TIME: Friday, October 14, 1988, 9:00 pm-5:00 pm.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of September Meeting
- III. Incomes of Americans Report: Asian Americans
- IV. SAC Report: "Civil Rights Issues in Arkansas"
- SAC Report: "Public Sector Efforts to Promote Employment and Business Opportunities for Minorities and Women in Milwaukee"
- V. Interim Appointments to the California, Colorado, Hawaii, and Iowa SACs
- VI. Reauthorization of the Commission
- VII. Nashville Regional Forum
- VIII. Staff Director's Report
 - A. Status of Earmarks
 - B. Personnel Report
 - C. Activity Report
- IX. Status Report: Federal Protection for Handicapped Infants
- X. Future Agenda Items

PERSON TO CONTACT FOR FURTHER

INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,
Solicitor, 376-8514.

[FR Doc. 88-23294 Filed 10-5-88; 8:12:01 am]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 53 FR 38409

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 am, October 7, 1988.

CHANGE IN THE MEETING: The closed meeting to discuss enforcement matters will be held on October 11, 1988 instead of October 7 as previously scheduled.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-23292 Filed 10-5-88; 12:00 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am, Tuesday, October 25, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-23293 Filed 10-5-88; 12:00 pm]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 pm (eastern time) Monday, October 17, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington DC 20507.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—(Office of Review and Appeals).
3. Policy Guidance on Current Issues of Sexual Harassment Law.

Closed Session

Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals.

Note. Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Frances M. Hart, Executive Officer on (202) 634-6748.

Date: October 4, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88-23291 Filed 10-5-88; 12:02 pm]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:07 a.m. on Monday, October 3, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of Liberty Bank and Trust Company, Warsaw, Indiana, an insured State nonmember bank, which was closed by the Director, Department of Financial Institutions for the State of Illinois on Monday, October 3, 1988.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6221 of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 4, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-23295 Filed 10-5-88; 12:28 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION**"FEDERAL REGISTER" CITATION OF****PREVIOUS ANNOUNCEMENT:** September 26, 1988, 53 FR 37389.**PREVIOUSLY ANNOUNCED TIME AND DATE****OF MEETING:** September 28, 1988, 12:00 p.m.**CHANGE IN THE MEETING:** The following Docket Numbers have been added to the agenda of September 28, 1988:*Item No., Docket No., and Company*

CAG-2—RP88-228-000, Tennessee Gas

Pipeline Company

RP-1(A)—TA88-1-33-000 and TA88-3-33-000, El Paso Natural Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 88-23319 Filed 10-5-88; 4:00 pm]

BILLING CODE 6717-02-M

FEDERAL MARITIME COMMISSION**TIME AND DATE:** 10:00 a.m.—October 12, 1988.**PLACE:** Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.**STATUS:** Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.**MATTERS TO BE CONSIDERED:****Portion Open To The Public**

1. Docket No. 87-24—*Foreign-to-Foreign Agreements—Exemption—Consideration of Comments.*

Portion Closed To The Public

1. Docket No. 86-9—*A/S Ivarans Rederi v. Companhia de Navegacao Lloyd Brasileiro, et al.*—Consideration of the Record.

CONTACT PERSON FOR MORE**INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88-23383 Filed 10-5-88; 4:00 pm]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 4, 1988.

TIME AND DATE: 10:00 am, Wednesday, October 12, 1988.**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.**STATUS:** Open.**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Birchfield Mining, Inc., Docket No. WEVA 87-272. (Issues include whether the judge erred in finding a violation of 30 CFR 75.30(a).
2. Freeman United Mining Company, Docket No. LAKE 86-67 (Issues include whether the judge erred in finding a violation of 30 CFR 75.3(b).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE**INFORMATION:** Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-23379 Filed 10-5-88; 4:00 pm]

BILLING CODE 6735-01-M

Corrections

Federal Register

Vol. 53, No. 195

Friday, October 7, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1125

[Docket Nos. AO-368-A16 and AO-226-A32; DA-88-108]

Milk in the Oregon-Washington and Puget Sound Inland Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Correction

In proposed rule document 88-21147 beginning on page 36291 in the issue of Monday, September 19, 1988, make the following corrections:

§1124.13 [Corrected]

On page 36309, in the third column, in § 1124.13(c)(2), in the 11th line, remove the second "which", and in the 12th line "(c)(2)" should read "(c)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 80992-8192]

Fishery Conservation and Management

Correction

In rule document 88-22585 beginning on page 38293 in the issue of Friday, September 30, 1988, make the following correction:

PART 640—[CORRECTED]

On page 38294, in the second column, in amendatory instruction 3, in the first line, after "640.2" remove "(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918 and 1926

[Docket No. H-022D]

Hazard Communication

Correction

In proposed rule document 88-22664 beginning on page 38738 in the issue of Monday, October 3, 1988, make the following corrections:

1. On page 38738, in the first column, under **DATES**, in the second paragraph, in the third line, after "parties" insert "planning".

2. On the same page, in the second column, in the last line, "October 22, 1988" should read "October 28, 1988".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Availability of Draft Technical Position on Postclosure Seals in an Unsaturated Medium

Correction

In notice document 88-22500 beginning on page 38393 in the issue of Friday, September 30, 1988, make the following correction:

On page 38394, in the first column, under **DATE**, in the second line, "October 31, 1988" should read "November 29, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 321

[Department of the Treasury Circular No. 750, Fourth Revision]

Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares)

Correction

In rule document 88-21984 beginning on page 37510 in the issue of Monday, September 26, 1988, make the following corrections:

1. On page 37510, in the first column, the subject heading should appear as set forth above.

2. On the same page, in the first column, under **SUMMARY**, in the 11th line, remove the comma after "through", and in the 12th line, add a comma after "system".

3. On the same page, in the second column, in the third paragraph, in the 15th line "the" should read "that".

§ 321.1 [Corrected]

4. On page 37511, in the third column, in § 321.1(f), in the sixth line, "thereof" should read "therefor".

5. On page 37512, in the first column, in § 321.1(j), in the eighth line, "Presenting" should read "presenting".

§ 321.23 [Corrected]

6. On page 37515, in the second column, in § 321.23(b), in the third line, "entitle" should read "entitled".

Appendix—[Corrected]

7. On page 37519, in the first column, in *Subpart G*, in paragraph 24.(a), in the second line, "Fee" should read "Fees".

BILLING CODE 1505-01-D

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Federal Register

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LIST OF PUBLIC LAWS**Last List October 5, 1988**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S. 1544/Pub. L. 100-470

National Trails System Improvements Act of 1988. (Oct. 4, 1988; 102 Stat. 2281; 3 pages) Price: \$1.00

S. 2846/Pub. L. 100-471

To provide for the awarding of grants for the purchase of drugs used in the treatment of AIDS. (Oct. 4, 1988; 102 Stat. 2284; 1 page) Price: \$1.00