

Thursday
October 20, 1988

Federal Register

Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see
announcement on the inside cover of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** November 4; at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1253 and 1260

Filing of Complaints and Allegations, Filing of Freedom of Information Act Requests; Address Changes

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Final regulations.

SUMMARY: On August 26, 1988, the Office of the Special Counsel proposed regulations to amend 5 CFR 1253.1 and 1260.3 to reflect one address for filing complaints and allegations, for disclosing information described in 5 CFR Part 1252, and for filing Freedom of Information Act requests. 53 FR 32623. The comment period for these proposed regulations expired on September 26, 1988. No comments were received. Accordingly, the regulations published today are effective upon publication.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, (202) or FTS 653-8982.

SUPPLEMENTARY INFORMATION: In its present form, 5 CFR 1253.1(a) provides that allegations of prohibited personnel practices and other violations of civil service law, rule or regulation within the investigative authority of the Special Counsel may be filed at either the Washington, DC, Atlanta, GA, Dallas, TX, Philadelphia, PA, or San Francisco, CA, offices. The Atlanta and Philadelphia offices have been abolished, and complaints for all offices are now processed initially at the Complaints Examining Unit in Washington. The revision of § 1253.1(a) reflects this change. Similarly, § 1260.3, concerning the filing of Freedom of Information Act requests, was keyed to § 1253.1. Since all FOIA requests are now processed at the Washington

Office, § 1260.3 is being revised to reflect this change. Finally, § 1253.1(b) is being amended to reflect room number and zip code changes. These final regulations are identical to the proposed regulations published on August 26, 1988.

List of Subjects

5 CFR Part 1253

Filing of complaints and allegations.

5 CFR Part 1260

Public information.

Mary F. Wieseman,
Special Counsel.

Parts 1253 and 1260 are revised to read as follows:

PART 1253—[AMENDED]

1. The authority citation for Part 1253 continues to read as follows:

Authority: 5 U.S.C. 1206(k), sec. 204(g) of Reorganization Plan No. 2 of 1978.

2. Section 1253.1 is revised to read as follows:

§ 1253.1 Place of filing.

(a) Allegations of prohibited personnel practices or other violations of civil service law, rule, or regulation within the investigative authority of the Special Counsel described in Part 1251 of this chapter should be submitted to the Office of the Special Counsel, Complaints Examining Unit, 1120 Vermont Avenue, NW Suite 1100, Washington, DC 20005.

(b) Information evidencing violations of law, rule, or regulation or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, described in Part 1252 of this chapter, should be submitted to the Office of the Special Counsel, 1120 Vermont Avenue, NW Suite 1100, Washington, DC 20005.

PART 1260—[AMENDED]

3. The authority citation for Part 1260 continued to read as follows:

Authority: 5 U.S.C. 552.

4. Section 1260.3 is revised to read as follows:

§ 1260.3 Procedures for obtaining records.

Requests for records shall be made in writing. Except in unusual circumstances, a determination shall be

made on a request within 10 working days. Requests should be addressed to the Office of the Special Counsel, 1120 Vermont Avenue, NW, Suite 1100, Washington, DC 20005. Requests must be clearly and prominently marked "Freedom of Information Act Request" on both the envelope and the letter.

[FR Doc. 88-24214 Filed 10-19-88; 8:45 am]

BILLING CODE 7400-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration.

ACTION: Delay of effective date.

SUMMARY: This notice announces the delay of the effective date of the Agency's revision of the surety bond guarantee regulations (13 CFR Part 115). The final rule was published August 24, 1988 at 53 FR 32195.

DATE: The new effective date for this rule is November 28, 1988.

ADDRESS: Comments may be sent to James W. Parker, Jr., Director, Office of Surety Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Suite 500, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James W. Parker, Jr., (703) 235-2900.

SUPPLEMENTARY INFORMATION: The effective date of this rule is being delayed to accommodate delays in printing forms necessary for the implementation of this rule.

Dated: October 13, 1988.

James Abdnor,
Administrator.

[FR Doc. 88-24211 Filed 10-19-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-83-AD; Amdt. 39-6049]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which currently requires inspection of the shims at the flap track/beam No. 2 attachment, for damage, and replacement of the bolts. That action was prompted by reports of loose bolts found in this structure which could result in bolt failure. This amendment requires repetitive visual inspections of bolts in the aft attachment of flap track beams 2 to 6 until installation of new steel bolts, washers, and wirelocked nuts is accomplished. This amendment is prompted by reports of damaged nut and bolt threads found during routine inspection of the flap beam aft attachments. This condition, if not corrected, could lead to rupture of the bolts located at the aft attachment of the flap beams and the wings.

EFFECTIVE DATE: December 1, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 85-09-06, Amendment 39-5052 (50 FR 18856; May 3, 1985), applicable to Model A-300 series airplanes, to require repetitive visual inspection of bolts in the aft attachment of flap track beams 2 to 6 until installation of new steel bolts, washers, and wirelocked nuts, was published in the Federal Register on July 25, 1988 (53 FR 27869).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested that the inspection interval be increased from the proposed 1,000 landings to 1,600 landings after the effective date of the proposed rule in order to coincide with its routine inspection intervals. The FAA does not concur with this request. The

FAA has determined that the interval proposed is the maximum permissible inspection time allowed without compromising air safety. However, if an individual operator can provide substantiating data and/or alternate inspection procedures to the FAA that will justify a change in the inspection times specified in the AD, and still maintain an acceptable level of safety, that request will be considered in accordance with the provisions of paragraph E. of the final rule.

The applicability statement of the AD has been revised to clarify that all aircraft listed in either of the referenced service bulletins are subject to the requirements of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change indicated above.

It is estimated that 52 airplanes of U.S. registry will be affected by this AD. It will take approximately 26 manhours per airplane to accomplish the required visual inspections, at an average labor cost of \$40 per manhour. It will take approximately 52 manhours to accomplish the required modification, at an average labor cost of \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$54,080 for the visual inspections and \$108,160 for the modification.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, effect on a substantial number of small entities, because few, if any, Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By superseding AD 85-09-06, Amendment 39-5052 (50 FR 18856; May 3, 1985), with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Service Bulletins A300-57-150, Revision 1, dated September 18, 1987, or A300-57-145, Revision 3, dated February 10, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of tension in the aft attachment of flap beams 2 to 6, accomplish the following:

A. Within the next 350 landings after the effective date of this AD, perform a detailed visual inspection of flap beams Nos. 2, 3, 4, 5, and 6 aft attachment on both wing for damage. Repeat this inspection within the next 700 landings after the effective date of this AD. If damaged parts are found, replace in accordance with Service Bulletin A300-57-150, Revision 1, dated September 18, 1987, or in accordance with Service Bulletin A300-57-145 Revision 3, dated February 10, 1988.

B. Within 700 landings after the effective date of this AD, replace bolts on flap beam No. 2 with 3/8-inch diameter bolts (Pre-mod 3553), in accordance with Service Bulletin A300-57-145, Revision 3, dated February 10, 1988.

C. Within 1,000 landings from the effective date of this AD, replace bolts on flap beams Nos. 2, 3, 4, 5, and 6 with 7/16-inch diameter bolts (Post-mod 3553), in accordance with Service Bulletin A300-57-145, revision 3, dated February 10, 1988.

D. Replacement of the flap beam bolts in accordance with Airbus Service Bulletin A300-57-145, Revision 3, dated February 10, 1988, constitutes terminating action for the inspections required by paragraph A., above.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 85-09-06, Amendment 39-5052.

This Amendment becomes effective December 1, 1988.

Issued in Seattle, Washington, on October 11, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24243 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-82-AD; Amdt. 39-6046]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Boeing Model 737-300 series airplanes by individual telegrams. This AD requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) which will reduce the risk of engine flameout in adverse weather conditions. This action is prompted by two recent dual engine flameouts during descent through moderate to severe thunderstorm activity.

DATES: Effective November 8, 1988. This AD was effective earlier to all recipients of telegraphic AD T88-13-51, dated June 14, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900

Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington. ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 24, 1988, a Boeing Model 737-300 series airplane experienced a dual engine flameout during descent through moderate to severe thunderstorm conditions. A previous incident occurred on August 21, 1987, during descent through 8,900 feet with similar weather and flight conditions. While the precise cause of the flameouts has not been established, the FAA has determined that certain operational measures must be taken which will reduce the potential for engine flameout under these conditions.

On June 14, 1988, the FAA issued telegraphic AD T88-13-51 (which superseded telegraphic AD T88-11-51), applicable to all Model 737-300 series airplanes, which requires a revision to the Limitations Section of the AFM to require operation with a minimum N_1 engine speed of 45 percent, engine ignition in the FLIGHT position when flying in moderate to severe precipitation, and a cautionary note advising that flight in moderate to severe thunderstorm activity is to be avoided. This is considered to be an interim action, pending a complete evaluation as to the causes of the flameouts, at which time the FAA may consider further rulemaking action.

Since a situation existed, and still 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 does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration 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 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

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 as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes equipped with CFM International CFM56-3 series engines, certificated in any category. Compliance is required within 72 hours of the effective date of this AD, unless previously accomplished.

To reduce the risk of engine flameout in adverse weather conditions, accomplish the following:

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

Operation During Moderate to Heavy Precipitation:

When flight in moderate to heavy precipitation is encountered or anticipated, accomplish the following:

1. Engine start switches—FLIGHT.
2. Minimum Engine N_1 —45%.
3. Auto-throttle—OFF in moderate to severe turbulence.

Note.—Moderate to heavy precipitation is to be assumed if indicated by any of the following sources: aircraft weather radar, reports, or observations.

Operating in Moderate to Severe Thunderstorm Activity: Cautionary Note.

Flight operation should be conducted so that moderate to severe thunderstorm activity is avoided.

B. For operations in known or forecast precipitation, notwithstanding the Minimum

Equipment List (MEL), the following items must be operable for dispatch:

1. Weather Radar.
2. Engine Ignition System—both engines, left and right ignitors.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, 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.

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

This AD supersedes telegraphic AD T88-11-51 issued May 27, 1988.

This amendment becomes effective November 8, 1988, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T88-13-51, issued June 14, 1988.

Issued in Seattle, Wash., on October 6, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24244 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-140-AD; Amdt. 39-6047]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes, which requires repetitive inspections of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary. This amendment is prompted by a report of the loss of nose gear steering. This condition, if not corrected, could result in loss of control of the airplane on the ground.

EFFECTIVE DATE: November 8, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South,

Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), in accordance with the provisions of an existing bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe-146 series airplanes. There has been a report of breakage of the locking wire which secures the steering cuff ring nut. The nut dislodged and the steering cuff dropped, resulting in the loss of nose wheel steering. This condition, if not corrected, could result in loss of control of the airplane on the ground.

British Aerospace has issued Service Bulletin 32-A95, dated August 24, 1988, which describes procedures for inspection of the nose wheel steering cuff ring nut for broken locking wire and security of the nut, and repair, if necessary. The United Kingdom CAA has classified the service bulletin as mandatory.

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

Since this condition is likely to exist or develop on other airplanes of the same type registered in the United States, this AD requires inspection of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary, in accordance with the service bulletin previously mentioned. The FAA has determined that the 48-hour initial compliance time recommended in the service bulletin places an undue burden on the operators, since the type of failure is not normally catastrophic in itself. The FAA has determined that the 100 landings initial compliance time specified in this AD provides an acceptable level of safety based on the reports of problems to date.

Since a condition 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 does 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:

British Aerospace: Applies to all British Aerospace Model BAe 146 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of control of the airplane on the ground, accomplish the following:

A. Within 100 landings after the effective date of this AD, inspect the nose wheel steering cuff ring nut for broken locking wire and security of the nut, in accordance with paragraph 2A of British Aerospace Service Bulletin 32-A95, dated August 24, 1988.

1. If the lock wire is found intact, repeat the inspection in accordance with paragraph 2A of the service bulletin at intervals not to exceed 100 landings from last inspection.

2. If the lock wire is damaged, broken, or missing, repair in accordance with paragraph 2A of BAe Service Bulletin 32-A95 before further flight, and reinspect in accordance with paragraph 2B of BAe Service Bulletin 32-A95, at intervals not to exceed 100 landings from last inspection.

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

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 8, 1988.

Issued in Seattle, Washington, on October 6, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24245 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-21-AD; Amendment 39-6050]

Airworthiness Directives; Cessna TU206, TP206, T207, T210 and P210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna TU206, TP206, T207, T210 and P210 Series airplanes which requires installation of an acceptable fluid hose in place of certain Aeroquip Corporation, Aerospace Division fluid carrying 601 type hose assemblies located forward of the firewall. The FAA has determined that

certain Aeroquip manufactured hose assemblies are developing serious leaks within 100 hours of original installation. This action will reduce the likelihood of engine power loss caused by rapid depletion of lubricating oil or fuel as a result of failure of the suspect Aeroquip 601 hose assemblies.

DATES: Effective Date: November 24, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Single Engine Service Bulletin SEB 88-5, dated June 24, 1988, applicable to this AD may be obtained from the Cessna Aircraft Company Piston Aircraft Marketing Division, P.O. Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316-946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of certain Aeroquip type 601 hoses on Cessna Models TU206, TP206, T207, T210 and P210 Series airplanes was published in the Federal Register on July 26, 1988 (53 FR 28004). The proposal resulted from incident reports on Cessna Models T210L and T210N airplanes which indicated that engine lubricating oil had been lost as a result of cracking from rapid heat aging of certain flexible hose assemblies.

The proposal identified Aeroquip Model 601 hose assemblies with Federal Supplier code for manufacturers (manufacturing code) FSCM 50556 as unacceptable for continued use in aircraft engine compartment installations. Several suspect Aeroquip Model 601 hose assemblies were reported to have developed leaks in less than 100 hours time-in-service. Unidentified hose assemblies that were thought to be manufactured from the suspect hose material have also failed (developed leaks shortly after being placed in service). The cause of the hose leakage was determined to be cracks induced by the high temperature environment in the engine compartment. Similar Aeroquip 601 hose assemblies manufactured and identified with manufacturing code FSCM 06827 have not been reported to have an aging problem.

Interested persons have been afforded an opportunity to comment on the proposal. One comment was received. The single comment (from the hose manufacturer) proposed to limit the AD to those hoses manufactured between the first quarter of 1984 (1Q84) and the third quarter of 1987 (3Q87) and installed on the aircraft from April, 1984 through May, 1988. This comment was submitted as a result of the uncertainty that all suspect hoses were correctly identified. Some suspect hoses have been replaced that could have been identified with the tag from the previously installed hose, or another tag with insufficient information. The FAA concurs and the final rule will require removal of all Aeroquip Model 601 hoses that have been installed between April, 1984 and May, 1988. This change does not increase the regulatory burden.

The FAA has determined that approximately 7,000 turbocharged single engine airplanes have been manufactured by Cessna Aircraft Company. An estimated 50% (3,500) of these airplanes are considered to be currently operational in the United States. The projected replacement cost of the Aeroquip Model 601 hoses in 1,750 (half of the 3,500) of these airplanes is \$600 per airplane. The total cost is estimated to be \$1,050,000 to the private sector. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

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.

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); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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—[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 AD:

Cessna: Applies to all TP206, TU206, T207, T210 and P210 Series airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 75 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent power loss or fire due to failure of certain Aeroquip 601 hose assemblies, accomplish the following:

(a) Visually inspect all of the exterior metal braided flex hose assemblies, including firesleeve hose assemblies, in the engine compartment. If the Aeroquip Part Number AE701 appears on the hose identification tag, no further action is required per this AD.

(b) If the hose identification tag displays the model/part number suffix 601, accomplish the following:

(1) Determine if the hose is identified with a cure date 1Q84 through 3Q87.

Note.—The cure date refers to the quarter and year of manufacture, for example, 1Q84 refers to a hose manufactured in the first quarter of 1984.

(2) Review the airplane/engine log books or records to determine if any engine compartment Model 601 hose was replaced between April, 1984 and May, 1988.

(3) If the hose identification tag indicates that the hose was not manufactured with a cure date of 1Q84 through 3Q87 and the above review of the log books indicates that no Model 601 hoses were replaced between April, 1984 and May, 1988, no further action is required per this AD.

(4) If any engine compartment Model 601 hose displays a manufactured code date of 1Q84 through 3Q87, if there is no manufacturing code tag, or the engine/airplane logs/records indicate that a Model 601 hose was installed between April 1984, and May, 1988, replace the suspect hoses as follows:

(i) Prior to further flight replace the waste gate supply hose assembly, Aeroquip P/N 601000-4-0310 or the hose identified as Cessna S1236-4-0310 supplied by sources other than Cessna, or as identified above with an Aeroquip P/N AE3663162E0310 hose or equivalent in accordance with Cessna Service Bulletin SEB 88-5, dated June 24, 1988, or with an Aeroquip 601000-4-0310 hose

assembly displaying a manufacturing cure date of 4Q87 or subsequent.

(ii) Within the next 12 calendar months, replace all other suspect Aeroquip 601 type hose assemblies in the engine compartment with a serviceable hose displaying a manufacturing cure date of 4Q87 or subsequent.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Piston Aircraft Marketing Division, P.O. Box 1521, Wichita, Kansas 67201. These documents may also be examined at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 24, 1988.

Issued in Kansas City, Missouri, on October 11, 1988.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24246 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-102-AD; Amdt. 39-6053]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register, revises, and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Embraer Model EMB-120 series airplanes by individual telegrams. This AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) concerning certain inflight operational procedures, and the addition of emergency propeller overspeed procedures. This action is prompted by several incidents where, during flight, propellers on this model airplane developed an overspeed condition. This condition, if not corrected, could lead to

the loss of the ability to feather the propeller, and resultant loss of the ability to maintain a safe altitude. This action also amends the previously issued telegraphic AD by revising the minimum airspeeds to be observed during certain required operations, reordering one sequence of procedures, and clarifying the language used in an informational note.

EFFECTIVE DATE: November 7, 1988.

ADDRESSES: The applicable service information may be obtained from Embraer, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Aerospace Engineer, Atlanta Aircraft Certification Office, Propulsion Branch, FAA, Central Region, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: On August 4, 1988, the FAA issued telegraphic AD T88-16-51, applicable to Embraer EMB-120 series airplanes, which requires a revision to certain inflight operational procedures, and the addition of emergency propeller overspeed procedures to the Airplane Flight Manual (AFM). That action was prompted by three incidents during flight where propellers on Model EMB-120 series airplanes developed an overspeed condition. Flight data recorder information for one occurrence indicated a simultaneous overspeed on both propellers, which resulted in the loss of the airplane. All of these overspeed incidents occurred at low power at the start of descent. Propeller feathering during these incidents was difficult or not possible using existing procedures.

Investigation into the probable cause of these propeller overspeed incidents has, thus far, failed to reveal any discrepancies associated with the propeller or engine system which would produce an uncommanded propeller overspeed. However, it is possible to produce such an overspeed in flight by moving the power level below the flight idle setting or stop. This action moves the propeller into the Beta range, which inhibits the response of both the main and overspeed propeller governors, and negates the overspeed protection of the pitch lock. In flight, this action allows the propeller blades to rapidly move into

the low pitch and overspeed without governing protection.

The current Airplane Flight Manual (AFM) does not specifically prohibit power lever movement below the flight idle stop, and such action would enhance slowing the aircraft at the start of descent, particularly on a clean airplane such as the Embraer Model EMB-120.

This condition, if not corrected can lead to the loss of the ability to feather the propeller, and resultant loss of ability to maintain safe altitude.

Subsequent to the issuance of telegraphic AD T88-16-51, Embraer conducted further testing of the airplane under conditions which would prompt the propeller overspeed condition. These tests have revealed that a reduction is necessary in certain minimum airspeeds previously recommended by operations during emergency procedures in case of propeller overspeed. The FAA agrees that these reductions in airspeed have proven to be safe minimum airspeeds that will provide a better probability of feathering. Accordingly, the FAA has determined that this AD must be revised to require these lower airspeeds during the emergency procedures.

Additionally, paragraph A.2. of the final rule has been revised to reverse the sequence of "SYNCHROPHASING" and "CONDITION LEVER (AFFECTED ENGINE)" in the initial steps of emergency procedures in case of propeller overspeed. The FAA had determined that this change is necessary since it permits feathering procedures to be accomplished at an earlier stage.

The wording of the first NOTE paragraph A.2. has also been revised to clarify the description of the action occurring relevant to power reduction.

Since a situation existed, and still 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 does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The Federal Aviation Administration 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 or analysis 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 as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising Telegraphic AD T88-16-51, issued August 4, 1988, as follows:

Empresa Brasileira de Aeronautica S.A.

(Embraer): Applies to all Model EMB-120 series airplanes, certified in any category. Compliance required within 24 hours after the effective date of this AD, unless previously accomplished.

To prevent an overspeed occurrence, accomplish the following:

A. Insert the following into the FAA-approved Airplane Flight Manual (AFM) and alert all flight crews. This may be accomplished by inserting a copy of this airworthiness directive (AD) into the appropriate section of the AFM.

1. *Limitations: Powerplant:*
—Inflight Operations at Power Settings Below FLT Idle Not Approved

2. *Emergency Procedures in Case of Propeller Overspeed:*

—Power Lever (Affected Engine)—FLT Idle
—Condition Lever (Affected Engine)—Feather
—Synchrophasing—Off
—Power Lever (Operative Engine)—FLT Idle (Altitude Permitting)
—Flaps—15° (Airspeed Permitting)
—Airspeed—125 Kias Minimum

Note.—Power reduction on the operative engine will increase decel rate to 125 Kias and will prevent adverse aircraft handling qualities associated with V_{mc} . Operative engine may be used as necessary to maintain altitude airspeed.

Note.—With Np above 120%, both mechanical and electrical auxiliary feather systems may not have sufficient authority to feather the propeller. Therefore, it is necessary to reduce the Np Below 120% in order to obtain satisfactory feathering action.

—If Np is below 120%:

• Electric Feathering Switch—on.

—If Np is Above 120%:

• Airspeed/Flaps—Reduced airspeed.

Extended flaps per table below to reduce Np below 120%:

Minimum airspeed	Flaps (degree)
125 Kias.....	15
120 Kias.....	25
115 Kias.....	45

• Power Lever (Operative Engine)—as required (see Table above).

Note.—With flaps lowered past 15°, the landing gear warning will sound.

• Electrical Feather Switch—on.

Note.—The electrical auxiliary feathering pump is automatically turned off after 20 seconds. Therefore, for further pump operation, it is necessary to turn the switch off, then on. The pump is capable of six consecutive operations.

—If Propeller Does Not Feather:

Warning!

Do not shut down the affected engine unless additional failures warrant shutdown.

• Airspeed—125 Kias (Min).

• Flaps—15°.

• Land as soon as possible—Use procedures for a one engine inoperative approach and landing maintain $V_{ref} + 10$ until landing assessed.

—When Propeller is feathered:

• Condition Lever—Fuel cut off.

• Complete precautionary engine shutdown if propeller is feathered prior to landing.

B. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central 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, Atlanta Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Embraer, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective November 7, 1988.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.

[FR Doc. 88-24252 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-32-AD; Amdt. 39-6048]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA26-T, SA26-AT, SA226-T, SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC Airplanes

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to the Fairchild Aircraft Corporation SA26, SA226, and SA227 series airplanes which requires inspection and replacement as necessary of cockpit and cabin outer window panes. This AD will allow for safe operation of the airplane unpressurized until cracked window panes can be replaced. Several in-flight window failures have been reported involving crewmember and passenger injuries. This inspection and replacement will preclude failure of the windows with resultant possible injury to crewmembers and passengers.

DATES: Effective Date: November 4, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation Service Bulletin Nos. 26-88, dated April 28, 1969; 26-56-10-038, revised October 29, 1984; 226-56-001 and 227-56-001, both revised January 5, 1984; 226-56-002, revised July 29, 1983; 227-56-002, issued January 5, 1984; and 226-56-003 and 227-56-003, both dated September 13, 1984, applicable to this AD, may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michele M. Owsley, Airplane Certification Branch, ASW-150, DOT/FAA, Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5161.

SUPPLEMENTARY INFORMATION: On September 1, 1988, a Fairchild Model SA226-TC airplane being operated in air carrier service experienced a failure of the copilot's side window while cruising at 17,000 feet. The failure resulted in injuries to the copilot. The airplane had flown 16,245 hours and had 25,137 pressurization cycles at the time of the accident. A subsequent fleet inspection by the air carrier revealed several cracked cockpit side windows and passenger cabin windows.

The FAA's Service Difficulty Reports reveal that 18 acrylic windows and 7 non-acrylic windows on Fairchild SA226 and SA227 series airplanes have been reported cracked or failed. Fourteen of the acrylic window reports included information on the service time of the airplane involved. Of these fourteen, half of the reports were at less than 1,000 hours and the remainder were at less than 10,000 hours. The hours on the non-acrylic windows vary across the current life of the fleet.

A previous cockpit side window failure in 1984 also resulted in rapid decompression and crewmember injuries. At that time the manufacturer conducted crack propagation testing in acrylic panels to determine crack growth characteristics. The results of this testing were used in the service bulletins generated at that time. The FAA has determined that operators who accomplish the service bulletins at the recommended intervals are detecting cracks before catastrophic failure. Fairchild is currently revising the Airworthiness Limitations Manual for the SA227 series airplanes to incorporate the service bulletin inspections.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring initial and repetitive inspections of the cockpit and cabin windows in all Fairchild SA26, SA226, and SA227 series airplanes. If cracks are found which do not exceed the limits specified in the AD, the airplane may continue to operate unpressurized provided the cracked window is reinspected periodically and the crack limits are not exceeded. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, 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 does 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 major under section 8 of 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 regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

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—[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 AD:

Fairchild Aircraft Corporation: Applies to Models SA26-T, SA26-AT, SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the cockpit and cabin windows, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) unless accomplished within the previous 2500 hours TIS, and thereafter at intervals not to exceed 2500 hours TIS from

the last inspection, visually inspect all cockpit windows in accordance with Fairchild Aircraft Corporation Service Bulletins 26-68, dated April 28, 1969; 26-56-10-038, revised October 29, 1984; 226-56-003 or 227-56-003, both dated September 13, 1984; as applicable, and visually inspect all cabin windows in accordance with Fairchild Aircraft Corporation Service Bulletins 226-56-001 (SA226-T and SA226-T(B)), revised January 5, 1984; 227-56-001 (SA227-TT), revised January 5, 1984; 226-56-002 (SA226-AT and SA226-TC), revised July 29, 1983; 227-56-002 (SA227-AT and SA227-AC), dated January 5, 1984, as applicable.

(1) If cracks are found in any given window which exceed 4.3 inches in combined total length, prior to further flight, replace the window with a serviceable window.

(2) If cracks are found on any given window which do not exceed 4.3 inches in combined total length and replacement parts are not available, the airplane may continue to operate provided:

(A) The cracked window is reinspected for crack growth thereafter at intervals not to exceed every 250 hours TIS. If the combined total length of the cracks exceeds 4.3 inches, prior to further flight, replace the window with a serviceable window.

(B) Fabricate and install on the instrument panel, as near as possible to the pressurization controls and in clear view of the pilot, the following placard using letters of 0.10 inch minimum height: "AIRPLANE MUST BE OPERATED UNPRESSURIZED", and operate the airplane in accordance with this limitation.

(C) Place a copy of this AD in the limitations section of the Pilots Operating Handbook or the FAA Approved Airplane Flight Manual and observe the specified limitation.

(D) The placard, the 250 hour TIS reinspections, and the limitations specified in paragraphs (a)(2)(A), (a)(2)(B), and (a)(2)(C) above, may be removed and the airplane pressurized in the normal manner when all of the cracked windows have been replaced.

(b) The intervals between the inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance on the airplane.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, DOT/FAA, Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5150.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 4, 1988.

Issued in Kansas City, Missouri, on October 7, 1988.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24247 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-167-AD; Amdt. 39-6006]

Airworthiness Directives; General Dynamics Models 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified For Turbo-propeller Power

August 23, 1988.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all General Dynamics Models 340, 440, and C-131 (Military) series airplanes, including turbo-propeller conversions, which requires supplemental structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some General Dynamics Models 340, 440, and C-131 series airplanes are approaching, or in some cases, have exceeded the manufacturer's original design goal. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. This condition, if not corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Effective November 21, 1988. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of November 21, 1988.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division, Lindberg Field Plant, P.O. Box 85377, San Diego, California 92138, Attention: Derek Trusk. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Transport Airplane Office, 3229 E. Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Los Angeles Transport Airplane Office, ANM-120L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California; telephone (213) 988-5234.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires supplemental structural inspection of General Dynamics Model 340, 440, and C-131 (Military) series airplanes, was published in the Federal Register on February 24, 1988 (53 FR 5428).

Interested persons have been afforded an opportunity to participate in the making of this amendment.

No comments were received in response to the proposal.

The final rule has been revised to remove all references to the use of "later FAA approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph D.

The reporting requirements contained in paragraph A. of this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously described.

It is estimated that 350 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,000 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the initial cost to U.S. operators to implement the SID program is estimated to be \$14,000,000.

The recurring inspection cost to the affected operators is estimated to be 500 manhours per airplane per year, at an average labor cost of \$40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be \$7,000,000.

Based on the above figures, the total cost impact of this AD is estimated to be \$14,000,000 for the first year, and \$7,000,000 for each year thereafter.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 and significant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 340, 440, or C-131 (Military) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by reference.

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:

General Dynamics (Convair): Applies to Models 340/440 and C-131 (Military) series airplanes, all serial numbers, certificated in any category, including those modified for turbo-propeller power. Compliance required as indicated, unless previously accomplished.

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

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 3 of General Dynamics, Report No. ZS-340-1000, 340/440 Supplemental Inspection Document (SID), dated November 14, 1986, Addendum I, dated April 14, 1987, Addendum II, dated May 4, 1987, and Addendum III, dated August 4, 1987. The non-destructive inspection techniques set forth in the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to General

Dynamics, in accordance with the instructions in the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SID.

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

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Transport Airplane Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Transport Airplane Office, FAA, Northwest Mountain Region.

General Dynamics Report No. ZS-340-1000, 340/440 Supplemental Inspection Document (SID), dated November 14, 1986, including Addendum I, dated April 14, 1987, Addendum II, dated May 4, 1987, and Addendum III, dated August 4, 1987, identified and described in this document, are incorporated by reference and made part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamic/Convair Division, Lindbergh Field Plant, P.O. Box 85377, San Diego, California 92138, Attention: Derek Trusk. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 E. Spring Street, Long Beach, California.

This amendment becomes effective November 21, 1988.

Issued in Washington, DC, on August 17, 1988.

Thomas E. McSweeney,

Acting Director, Office of Airworthiness.

[FR Doc. 88-24248 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-19]

Control Zone Alteration; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the control zone area airspace near Flint, MI. The deletion of the VOR Runway 05/23 Standard Instrument Approach Procedure (SIAP) to Bishop Airport, Flint, MI, requires an alteration to the control zone. The intended effect

of this action is to eliminate two extensions of the control zone and return that portion of controlled airspace back to uncontrolled status.

EFFECTIVE DATE: 0901 u.t.c., February 9, 1989.

FOR FURTHER INFORMATION CONTACT:

Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 24, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone area airspace near Flint, MI (53 FR 32250).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the control zone area airspace near Flint, MI.

The present control zone area is being modified due to the deletion of the VOR Runway 05/23 SIAP to Bishop Airport, Flint, MI. This modification will delete two extensions of the control zone—one to the northeast and one to the southwest—and return that portion of airspace to an uncontrolled status.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed 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, when promulgated, 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, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Flint, MI [Revised]

Within a 5-mile radius of Flint, MI, Bishop Airport (lat. 42°57'56" N., long. 83°44'37" W.), and within 2 miles each side of the Flint VORTAC 075°, 187°, 280° and 351° radials extending from the 5-mile radius zone to 8 miles E, S, W, and N of the VORTAC.

Issued in Des Plaines, Illinois on October 7, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-24260 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Exemption of Certain Conjugated Estrogens Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulation that allows certain conjugated estrogens tablets to be marketed in mnemonic packages¹ that

are not child-resistant. Except for this regulation, child-resistant packaging would be required because these substances are oral prescription drugs. The amendment increases from 26.5 mg to 32 mg the amount of the drug allowed per non-child-resistant mnemonic package. The drug is used for the treatment of a variety of female hormonal imbalance disorders and is exempted because of its low toxicity.

EFFECTIVE DATE: This exemption is effective October 20, 1988.

ADDRESSES: All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: Charles Jacobson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, oral prescription drugs intended for human use are subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471-1476. 16 CFR 1700.14(a)(10). Previously, there has been an exemption from these requirements for conjugated estrogens, when dispensed in mnemonic packages containing not more than 26.5 mg of the drug and containing no other substances subject to § 1700.14(a)(10). 49 FR 50388; December 28, 1984. Conjugated estrogens are hormonal drugs used for the treatment of various female hormone imbalance disorders.

By letter dated October 10, 1986, Ayerst Laboratories petitioned the Commission to extend the exemption for conjugated estrogens from 26.5 mg to 32 mg per mnemonic package.

The petitioner requested the extension because of current prescribing practices, which indicate that many physicians now prefer a 25-day monthly cyclic regimen to the previously-favored 21-day regimen.

As justification for the requested increased exemption, the petitioner cited the human experience data which supported the original exemption for conjugated estrogens. These data show the absence of acute toxicity resulting from accidental ingestion of conjugated estrogens by young children.

The petitioner states that the exemption is further warranted because

conjugated estrogens are closely related biochemically and pharmacologically to several of the estrogenic compounds used as oral contraceptives, which were previously exempted from child-resistant packaging requirements by the Commission, except that conjugated estrogens are less potent in terms of estrogenic activity. The petitioner notes that the exemption for oral contraceptives does not refer to specific amounts of hormones. The petitioner believes that this provides a precedent for extension of the exemption for conjugated estrogens from 26.5 mg to 32 mg per package.

The petitioner states that because conjugated estrogens are used primarily to treat postmenopausal symptoms and osteoporosis, this product, unlike oral contraceptives, is used primarily in households without young children. The petitioner states that the many elderly users of the product are likely to experience difficulty using child-resistant packaging.

Conjugated estrogens have been available for several decades as a prescription drug for the treatment of female hormone imbalance disorders. It is estimated that between 2.9 and 3.6 million women are using these products. About 12 pharmaceutical companies manufacture oral conjugated-estrogens products. Unit volume for these products in 1980 is estimated at 564 million tablets, with sales of \$80 million. Approximately 7.3 million prescriptions for these products were filled in 1980.

B. Toxicity Data

Theoretical Lethal Dose

Based upon the extrapolation of animal test data submitted by the petitioner, the theoretical lethal dose of conjugated estrogens for a 10 kilogram child would be between 1.8 and 3.3 grams, which is 58 to 100 times the amount that would be in a single package of the requested exempted amount.

Toxicity

Exposure to estrogens during pregnancy may result in damage to the fetus. Similar effects have been observed for a variety of drugs, indicating the special susceptibility of the fetus to the toxic effects of many chemicals and drugs. Long-term therapeutic administration of estrogenic compounds has been shown to lead to an increased risk, in women, of endometrial cancer and of various blood clotting disorders. There is no evidence, however, that such effects would be expected from a single acute exposure

¹ A mnemonic package is any package designed for the administration of one dosage unit at a time and incorporating any feature which serves to remind the user to take the dosage at specified intervals throughout the period during which the medication is to be administered.

in a child. No such effects have been reported over the span of more than forty years during which these drugs have been marketed.

C. Injury Data

For the period 1978 through 1984, data from the National Clearinghouse for Poison Control Centers show 169 reported ingestions of conjugated estrogens. Five of the cases reported symptoms; none resulted in a hospital visit.

For the period 1978 through January 1987, the Commission's "Children and Poisonings" data base shows 13 children treated in hospital emergency rooms following ingestion of conjugated estrogens. None of the children was hospitalized.

Literature reviews conducted by the staff and by the petitioner reveal no reports of death or serious injury following ingestions of conjugated estrogens by children under age five. There have been reports of cramping, vomiting, nausea, and diarrhea following acute ingestion of large amounts of estrogens.

It should be noted also that unit dose packaging tends to limit the amount a small child ingests, because of the time and effort necessary to open each unit.

D. FDA Comments

The Food and Drug Administration, Center for Drugs and Biologics, also reviewed the petition and concluded that the increased amount of conjugated estrogens, *i.e.*, from 26.5 mg per mnemonic package to 32 mg per mnemonic package, would pose no health risk to children under five as a result of accidental ingestion.

E. Action on the Petition

Based upon the animal data and human experience information discussed above, it appears that this drug has low toxicity and poses a minimal threat of illness or injury in children as a result of accidental ingestion.

The Commission preliminarily concluded that the degree and nature of the hazard to children presented by the availability of the conjugated estrogens tablets that are the subject of this petition are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposed to amend 16 CFR 1700.14(a)(10) to exempt Conjugated Estrogens Tablets, U.S.P., from requirements for child-resistant

packaging, when dispensed in mnemonic packages containing not more than 32 mg of the drug. 52 FR 48450 (December 22, 1987). No comments were received on the proposal. After considering the available information, the Commission has decided to issue the requested exemption.

F. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact to the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The exemption issued below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

The Commission's regulations governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption issued below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

H. Effective Date

Since the rule issued below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable.

Accordingly, the rule shall become effective October 20, 1988.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14(a)(10)(xvii) is revised to read as follows:

§ 1700.14 Substance requiring special packaging.

(a) * * *

(10) * * *

(xvii) Conjugated Estrogens Tablets, U.S.P., when dispensed in mnemonic packages containing not more than 32.0 mg of the drug and containing no other substances subject to this § 1700.14(a)(10).

* * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24237 Filed 10-19-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 25-88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Immigration and Naturalization Service (INS), is identifying as a separate system of records its "Centralized Index," currently identified in 28 CFR 16.99 as "Subsystem (3)" of its Immigration and Naturalization Service Index System, JUSTICE/INS-001 (hereinafter referred to as the 001 system). INS is naming the new system "The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-

001A" (hereinafter referred to as the 001A system), and is promulgating this rule to exempt it from certain Privacy Act provisions; conversely, it is removing certain exemptions from the 001 system.

Specifically, the 001A system is exempted from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), and (g) of the Privacy Act, 5 U.S.C. 552a. Information in the system relates to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, material which has been properly classified pursuant to Executive Order, the privacy of third parties, and the identities of confidential sources involved in such investigations. Exemptions from subsections (e)(4)(I), (f) and (h) for the 001 system are removed because INS complies with the requirements thereof.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT:

J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION:

A proposed rule with invitation to comment was published in the *Federal Register* on May 11, 1988 (53 FR 16730). The public was given 30 days to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16, § 16.99 is amended as set forth below.

Dated: September 30, 1988.

Harry H. Flickinger,
Assistant Attorney General for
Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR 16.99 is amended by revising paragraph (a), by removing paragraphs (b) (8), (11) and (13), by redesignating paragraphs (b) (9), (10), (12) and (14) as

paragraphs (b) (8), (b)(9), (b)(10) and (b)(11) respectively, and by revising the newly redesignated paragraph (b)(11).

§ 16.99 Exemption of Immigration and Naturalization Service Systems—Limited Access.

(a) The following systems of records of the Immigration and Naturalization Service are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4)(G) and (H), (e) (5) and (8), and (g):

(1) The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001A.

(2) The Immigration and Naturalization Service Index System, JUSTICE/INS-001 which consists of the following subsystems:

(i) Agency Information Control Record Index.

(ii) Alien Enemy Index.

(iii) Congressional Mail Unit Index.

(iv) Air Detail Office Index.

(v) Anti-smuggling Index (general).

(vi) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.

(vii) Border Patrol Sectors General Index System.

(viii) Contact Index.

(ix) Criminal, Narcotic, Racketeer and Subversive Indexes.

(x) Enforcement Correspondence Control Index System.

(xi) Document Vendors and Alterers Index.

(xii) Informant Index.

(xiii) Suspect Third Party Index.

(xiv) Examination Correspondence Control Index.

(xv) Extension Training Enrollee Index.

(xvi) Intelligence Index.

(xvii) Naturalization and Citizenship Indexes.

(xviii) Personnel Investigations Unit Indexes.

(xix) Service Look-Out Subsystem.

(xx) White House and Attorney General Correspondence Control Index.

(xxi) Fraudulent Document Center Index.

(xxii) Emergency Reassignment Index.

(xxiii) Alien Documentation, Identification, and Telecommunication (ADIT) System.

The exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(b) * * *

(11) In addition, these systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H) to the extent they are subject to exemption pursuant to 5 U.S.C. 552a(k)(1). To permit access to records classified

pursuant to Executive Order would violate the Executive Order protecting classified information.

[FR Doc. 88-24305 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 88-084]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1988, and September 30, 1988, and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESS: The complete text of any temporary regulation may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the *Federal Register* is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover,

actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, Federal Register notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the Federal Register notice of

substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the Federal Register just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is

available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1988, through September 30, 1988, unless otherwise indicated.

Docket No.	Location	Type	Date
1-88-062	East River, NY	Safety Zone	June 15, 1988
1-88-056	Courageous Challenge, Boston, MA	Special Local Regulation	July 1, 1988
1-88-020	Great Kennebec River Whatever Race, ME	do	July 3, 1988
1-88-031	Upper New York Bay, Lower East River, NY	Safety Zone	Do.
1-88-031	Coney Island Channel, New York Harbor, NY	do	Do.
1-88-043	Lake Champlain, Burlington, VT	do	Do.
1-88-045	Barges BUCHANAN #114 and BUCHANAN #550, Tug NEWPORT, New Haven Harbor, New Haven, CT	do	Do.
1-88-030	East River, New York, NY	do	July 4, 1988
1-88-044	Liberty State Park, Jersey City, NJ	do	Do.
1-88-047	Stony Point Bay, Hudson River, NY	do	Do.
1-88-048	Upper New York Bay, Liberty State Park, NJ	do	Do.
COTP Boston, MA, Reg. 88-40	Boston Harbor, Boston Inner Harbor, Boston, MA	do	Do.
COTP Providence, RI, Reg. 88-053	New Bedford Harbor, MA	do	Do.
COTP Providence, RI, Reg. 88-054	Falmouth Harbor, Falmouth, MA	do	Do.
1-88-051	Hudson River, Watervliet, NY	do	July 9, 1988
1-88-023	Windjammer Days, Boothbay Harbor, ME	Special Local Regulation	July 13, 1988
1-88-061	New Haven Power Boat Grand Prix, New Haven, CT	do	July 16, 1988
COTP Providence, RI, Reg. 88-068	Rhode Island Sound, Narragansett Bay	Safety Zone	July 27, 1988
COTP Providence, RI, Reg. 88-067	do	do	July 28, 1988
1-88-085	Long Island Sound, New Rochelle, NY	do	July 30, 1988
1-88-060	Showboat Classic Power Boat Regatta, Greenwich, CT	Special Local Regulation	Aug. 6, 1988
1-88-063	Coney Island Channel, New York Harbor, NY	Safety Zone	Do.
1-88-070	New York Harbor, NY	do	Aug. 9, 1988
1-88-073	Newark Bay, NJ	do	Aug. 12, 1988
COTP Providence, RI, Reg. 88-074	Taunton River, Fall River, MA	do	Aug. 13, 1988
1-88-075	Hudson River, NY	do	Aug. 14, 1988
1-88-064	Point Pleasant Beach, Offshore Challenge, Manasquan, NJ	Special Local Regulation	Aug. 18, 1988
1-88-072	Gateway Powerboat Regatta, Stamford, CT	do	Aug. 20, 1988
1-88-078	Belmar, NJ	Security Zone	Sept. 2, 1988
1-88-079	New York Harbor, NY	do	Sept. 3, 1988
1-88-077	Upper New York Bay, New York Harbor	do	Sept. 5, 1988
1-88-080	Hudson River, NY	Safety Zone	Sept. 11, 1988
1-88-081	Passaic, NJ	do	Sept. 16, 1988
COTP Memphis, TN, Reg. 88-11	Mississippi River, Memphis Harbor, McKellar Lake	do	June 25, 1988
COTP St. Louis, MO, Reg. 88-05	St. Louis, MO, Upper Mississippi River, Mile 202.9 to Mile 203.4	do	July 3, 1988
2-88-03	Riverfront Regatta, Cumberland River, Mile 190.0 to Mile 191.0	Special Local Regulation	July 4, 1988
COTP Huntington, WV, Reg. 88-06	Ohio River, Mile 322.0 to Mile 323.0	Safety Zone	July 4, 1988
COTP Louisville, KY, Reg. 88-09	Louisville, KY	do	Do.
COTP Louisville, KY, Reg. 88-10	do	do	Do.
COTP Memphis, TN, Reg. 88-12	Mississippi River, Mile 734.8 to Mile 736.7	do	Do.
COTP Memphis, TN, Reg. 88-13	Arkansas River, Mile 118.7 to Mile 119.1	do	Do.
COTP Pittsburgh, PA, Reg. 88-03	Ohio River, From Mile 0.0 to Mile 0.8	do	Do.
COTP Paducah, KY, Reg. 88-01	Tennessee River, Mile 255 to Mile 258.5	do	Do.
2-88-02	Riverfront Regatta, Ohio River, Mile 470.8 to Mile 469.4	Special Local Regulation	July 16, 1988
2-88-05	Freeport Summerfest Regatta, Allegheny River, Mile 028.0 to Mile 029.5	do	Do.
COTP Huntington, WV, Reg. 88-08	Ohio River Mile 308.0 to 309.5	Safety Zone	July 23, 1988
2-88-04	Lions Club Community Festival, Ohio River Mile 408.0 to 409.0	Special Local Regulation	July 30, 1988
COTP Huntington, WV, Reg. 88-09	Ohio River, Mile 308.0 to Mile 309.5	Safety Zone	Do.

Docket No.	Location	Type	Date
COTP Huntington, WV, Reg. 88-10.	Ohio River Mile 355.0 to Mile 357.0	do	Aug. 4, 1988.
COTP Pittsburgh, PA, Reg. 88-04	Monongahela River, From Mile 31.75 to Mile 32.25	do	Aug. 9, 1988.
5-88-47	Independence Day Celebration, Marcus Hook, PA	Special Local Regulation.	July 2, 1988.
5-88-50	Fireworks Display, Pagan River, Chalmers Point, VA	do	July 3, 1988.
5-88-05	Marine Event: Elizabeth River, Norfolk/Portsmouth VA, Fourth of July Fireworks	do	July 4, 1988.
5-88-46	Marine Event: Freedom Festival Fourth of July Celebration, Delaware River, vicinity of Penns Landing, Philadelphia, PA.	do	Do.
5-88-49	Pine Hall Fireworks Display, Morris Creek, Matthews County, VA	do	Do.
5-88-51	York/Gloucester Fourth of July Celebration, York River, VA	do	Do.
5-88-55	Inner Harbor Fourth of July Celebration, Inner Harbor, Baltimore, MD	do	Do.
5-88-10	Start of Races to Cock Island, Waterside Area, Elizabeth River between Norfolk & Portsmouth, VA.	do	July 23, 1988.
COTP Philadelphia, PA, Reg. 88-003.	Delaware River, League Island	Safety Zone	July 24, 1988.
5-88-62	Burlington Regatta, Delaware River, NJ & PA	Special Local Regulation.	Aug. 7, 1988.
5-88-56	Insertion/Extraction Demonstration, Severn River, Annapolis, MD	do	Aug. 12, 1988.
5-88-60	1988 Jazz Festival, Delaware River, Philadelphia, PA	do	Aug. 19, 1988.
COTP Wilmington, NC, Reg. 88-01.	Atlantic Intracoastal Waterway, NC	Safety Zone	Sept. 2, 1988.
5-88-67	Defender's Day Fort McHenry/Baltimore Fireworks Display, Patapsco River, Baltimore, MD.	Special Local Regulation.	Sept. 11, 1988.
5-88-65	U.S. Customs Bicentennial Mock Drug Interdiction Demonstration	do	Sept. 13, 1988.
COTP Wilmington, NC, Reg. 88-04.	Atlantic Intracoastal Waterway, NC	Safety Zone	Sept. 14, 1988.
5-88-71	End of Summer Season Fireworks Display, Little Island, Little Egg Harbor, NJ	Special Local Regulation.	Sept. 17, 1988.
COTP Wilmington, NC, Reg. 88-05.	Atlantic Intracoastal Waterway, NC	Safety Zone	Sept. 19, 1988.
COTP Wilmington, NC, Reg. 88-06.	do	do	Sept. 22, 1988.
COTP Savannah, GA, Reg. 88-19	Savannah River	do	July 4, 1988.
7-88-31	Gold Cup Challenge	Special Local Regulation.	Sept. 17, 1988.
COTP Corpus Christi, TX, Reg. 88-08.	Corpus Christi Ship Channel	Safety Zone	May 27, 1988.
COTP Corpus Christi, TX, Reg. 88-09.	Matagorda Bay, TX	do	June 26, 1988.
COTP New Orleans, LA, Reg. 88-02.	Lower Mississippi River Mile 337 to Mile 340	do	July 8, 1988.
COTP Mobile, AL, Reg. 88-06	Gulf of Mexico, An Area Encompassing Approximately 1.8 Square Miles Adjacent to Pensacola Beach, Pensacola, FL	do	July 14, 1988.
COTP Houston, TX, Reg. 88-06	Houston Ship Channel, from Lyondell/Arco to Crown Central Petroleum	do	July 15, 1988.
COTP Mobile, AL, Reg. 88-09	Theodore Ship Channel, Theodore, AL	Security Zone	Aug. 1, 1988.
COTP Houston, TX, Reg. 88-007	Houston Ship Channel, from City Dock 15 to City Dock 20	Safety Zone	Aug. 10, 1988.
COTP New Orleans, LA, Reg. 88-04.	Around the Steamboat Natchez in transit on the Mississippi River from Naval Support Activity Wharf Mile 93.1 to Spanish Plaza Mile 95.0 LD3.	Security Zone	Aug. 16, 1988.
COTP Mobile, AL, Reg. 88-08	Pensacola Bay, Pensacola, FL	do	Aug. 21, 1988.
9-88-11	Toledo 4th of July Fireworks Display	Special Local Regulation.	July 3, 1988.
9-88-12	Festival USA Fireworks, Superior, WI	do	July 4, 1988.
9-88-13	Duluth Fourth Fest Fireworks Display	do	Do.
9-88-14	Huron Water Festival, Huron, OH	do	July 10, 1988.
9-88-17	International Jet Ski Boating Association Championship, Lake Michigan	do	July 21, 1988.
9-88-15	Bay Harbor Charity Classic	do	July 23, 1988.
9-88-16	1988 Grand Prix, Niagara River, Tonawanda, NY	do	Do.
COTP Duluth, MN, Reg. 88-01	Lake Superior—Duluth/Superior Harbor	Safety Zone	July 29, 1988.
COTP Buffalo, NY, Reg. 88-003	Rochester, NY	do	July 30, 1988.
9-88-22	Coast Guard Festival Fireworks Display, Grand Haven, MI	Special Local Regulation.	Aug. 6, 1988.
9-88-23	1988 Spirit of America Offshore Grand Prix, Lake Michigan	do	Aug. 13, 1988.
9-88-20	Wilhelm Offshore Classic, Presque Isle Bay—Lake Erie, Erie, PA	do	Aug. 20, 1988.
COTP Buffalo, NY, Reg. 88-005	Erie, PA	Safety Zone	Do.
9-88-24	East River Classic, Niagara River, North Tonawanda, NY	Special Local Regulation.	Aug. 21, 1988.
9-88-25	Toledo Festival Grand Prix, Maumee River, Toledo, OH	do	Sept. 3, 1988.
9-88-26	Grand Island Offshore Challenge, Niagara River, Tonawanda, NY	do	Sept. 10, 1988.
9-88-29	Rochester Offshore Challenge, Lake Ontario, Rochester, NY	do	Sept. 18, 1988.
COTP Buffalo, NY, Reg. 88-004	Lake Ontario	Safety Zone	Sept. 24, 1988.
COTP LA/LB, CA, Reg. 88-16	Port of Los Angeles/Long Beach, CA	do	July 1, 1988.
COTP LA/LB, CA, Reg. 88-15	Ports of Los Angeles/Long Beach, CA	do	July 4, 1988.
COTP San Francisco, CA, Reg. 88-04.	San Francisco Bay, CA	do	Do.
COTP LA/LB, CA, Reg. 88-17	Port of Hueneme, CA	do	July 9, 1988.
COTP San Diego, CA, Reg. 88-18	San Diego Bay, CA, Pacific Ocean	do	July 17, 1988.
COTP San Diego, CA, Reg. 88-19	do	do	July 23, 1988.
COTP San Diego, CA, Reg. 88-20	do	do	July 28, 1988.
COTP San Diego, CA, Reg. 88-21	do	do	July 29, 1988.
COTP San Diego, CA, Reg. 88-22	do	do	Aug. 1, 1988.
COTP San Diego, CA, Reg. 88-25	do	do	Aug. 16, 1988.

Docket No.	Location	Type	Date
COTP San Diego, CA, Reg. 88-26	do	do	Aug. 20, 1988
COTP LA/LB, CA, Reg. 88-18	Ports of Los Angeles/Long Beach, CA	Security Zone	Aug. 23, 1988
COTP LA/LB, CA, Reg. 88-19	do	Safety Zone	Aug. 25, 1988
COTP LA/LB, CA, Reg. 88-20	Port of Los Angeles, CA	do	Aug. 30, 1988
11-88-10	Supercup World Invitational—San Diego, CA	Special Local Regulation	Sept. 3, 1988
11-88-09	San Diego, California: 1988—1988 America's Cup Challenge Competition	do	Sept. 7, 1988
11-88-12	Fireworks Exhibition—San Diego, CA	do	Sept. 9, 1988
COTP San Diego, CA, Reg. 88-27	San Diego Bay, CA, Pacific Ocean	Safety Zone	Do
COTP San Diego, CA, Reg. 88-28	do	do	Sept. 15, 1988
COTP San Diego, CA, Reg. 88-21	Ports of Los Angeles/Long Beach, CA	do	Sept. 19, 1988
COTP San Diego, CA, Reg. 88-29	San Diego Bay, CA, Pacific Ocean	do	Do
COTP San Diego, CA, Reg. 88-30	do	do	Sept. 24, 1988
COTP San Diego, CA, Reg. 88-31	do	do	Sept. 26, 1988
COTP Honolulu, HI, Reg. 88-04	Molokini, HI	do	Aug. 10, 1988
COTP Southeast AK, Reg. 88-02	Juneau Harbor, Juneau, AK	do	July 3, 1988
COTP Southeast AK, Reg. 88-03	Crescent Bay, Sitka, AK	do	July 4, 1988

Bruce P. Navak,
Executive Secretary, Marine Safety Council.
[FR Doc. 88-24355 Filed 10-19-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Port Arthur, Texas, Reg. 88-04]

Security Zone Regulations; Port of Beaumont, TX, and Sabine Neches Waterway

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Security Zone within the Port of Beaumont and around the vessels USNS ALTAIR, USNS ALGOL, AND M/V LYRA. The zone is needed to safeguard the port and the vessels from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on 20 October 1988. It terminates on 17 November 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Commander J.L. Robinson at (409) 724-4343.

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

Drafting Information

The drafters of this regulation are LCDR B.J. Lambert, Project Officer for

the Coast Guard Captain of the Port, and CDR J.A. Unzicker, Jr., Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The evolution requiring this regulation will begin on or about 20 October 1988. Establishing this Security Zone is essential to facilitating REFORGER 88, a joint service military operation which includes a military equipment transfer through the Port of Beaumont, Texas. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.0401, 6.04-6, and 160.5.

2. A new § 165.T846 is added to read as follows:

§ 165.T846 Security Zone: Port of Beaumont, Texas and Sabine Neches Waterway in the vicinity of the USNS vessels ALTAIR, ALGOL, and M/V LYRA.

(a) *Location.* The following area is a Security Zone: Port of Beaumont within its fenced limited access perimeter, the Neches River immediately adjacent to this area and 2 miles ahead and 1 mile behind these vessels as they transit the Sabine Neches Waterway.

(b) *Effective Date.* This regulation becomes effective on 20 October 1988. It

terminates on 17 November 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Part 165.33, entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: September 21, 1988.

A.A. Whiting III,

Captain, USCG, Captain of the Port, Port Arthur, Texas.

[FR Doc. 88-24357 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3465-3]

Kentucky: Final Authorization of State Hazardous Waste Management Program for Radioactive Mixed Waste

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (hereinafter "RCRA" or the "Act"). EPA has reviewed Kentucky's application and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revision for the hazardous components of radioactive mixed waste satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revision for the hazardous components of radioactive mixed wastes. Kentucky's application for

program revision is available for public review and comment.

DATES: Final authorization for Kentucky shall be effective December 19, 1988, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Kentucky's program revision application must be received by the close of business November 21, 1988.

ADDRESSES: Copies of Kentucky's program revision application are available during normal business hours, Monday through Friday, at the following addresses for inspection and copying: Division of Waste Management, Kentucky Department for Environmental Protection, Fort Boone Plaza, Building #2, 18 Reilly Road, Frankfort, Kentucky 40601, Phone 502/564-6716; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC, 20460, Phone: 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; Phone (404) 347-4216, Gayle Alston, Librarian. Written comments should be sent to Otis Johnson, Jr., 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404/347-3016.

FOR FURTHER INFORMATION CONTACT:

Mr. Otis Johnson, Jr., 345 Courtland Street NE., Atlanta, Georgia 30365; Phone No. 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

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

B. Kentucky

Kentucky initially received final authorization on January 31, 1985 (50 FR 2550). On March 25, 1988, Kentucky submitted a program revision application for additional program approval for the hazardous components of radioactive mixed waste. Today, Kentucky is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Kentucky's application, and has made an immediate final decision that Kentucky's hazardous waste program revision satisfies all of

the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision until close of business November 7, 1988. Copies of Kentucky's application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

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

In order to obtain final authorization for radioactive mixed waste, the State of Kentucky has demonstrated and certified that its authority to regulate the hazardous components of radioactive mixed wastes, as specified at KRS 224.867(1)(k) and 301 KAR 30:010 § 1(173)(b) is equivalent to the federal requirements of the RCRA at 40 CFR 261.4(a)(4) and section 1004(27) of RCRA. Kentucky is not seeking authorization to operate in Indian lands.

C. Decision

I conclude that Kentucky's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted final authorization to operate its hazardous waste program as revised. Kentucky now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitation of its revised program application and previously approved authorities. Kentucky also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal

regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Patrick M. Tobin

Acting Regional Administrator.

Dated: September 28, 1988.

[FR Doc. 88-24348 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-7

[FPMR Temporary Regulation A-24, Revision 1, Supp. 1]

Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies

AGENCY: Federal Supply Service, GSA.
ACTION: Temporary Regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation A-24, Revision 1, regarding the use of travel agents and travel management centers by Federal executive agencies to August 31, 1989.

DATES: Effective date: September 1, 1988.

Expiration date: August 31, 1989, unless sooner canceled or revised.

FOR FURTHER INFORMATION CONTACT: Phyllis Hickman, Travel and Transportation Management Division (FBT), FTS 557-1264 or (703) 557-1264.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the

need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-7

Government employees, Government property management, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

For the reasons set out in the preamble, the following supplement is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations, Temporary Regulation A-24, Revision 1, Supplement 1

September 8, 1988.

To: Heads of Federal agencies

Subject: Use of travel agents and travel management centers (TMC's) by Federal executive agencies

1. **Purpose.** This supplement extends the expiration date of FPMR Temporary Regulation A-24, Revision 1.

2. **Effective date.** This regulation is effective September 1, 1988.

3. **Expiration date.** This regulation expires August 31, 1989, unless sooner canceled or revised.

4. **Explanation of changes.** The expiration date in paragraph 3 of FPMR Temporary Regulation A-24, Revision 1, is extended to August 31, 1989.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88-24172 Filed 10-19-88; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Part 101-7

[FPMR Temporary Regulation A-25, Supp. 4]

Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Government Travel System (GTS) Accounts, and Travelers Checks

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: The 1987-88 contract with Citicorp/Diners Club was extended 60 days. Accordingly, this supplement amends the expiration date of FPMR Temporary Regulation A-25 regarding the travel and transportation expense payment system using contractor-issued charge cards, Government travel system

accounts, and travelers checks to November 29, 1988.

DATES: *Effective date:* October 1, 1988.

Expiration date: November 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Phyllis Hickman, Travel and Transportation Management Division (FBT), FTS 557-1264 or (703) 557-1264.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-7

Government employees, Government property management, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following supplement is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations, Temporary Regulation A-25, Supplement 4

October 5, 1988.

To: Heads of Federal agencies

Subject: Travel and transportation expense payment system using contractor-issued charge cards, Government travel system (GTS) accounts, and travelers checks.

1. **Purpose.** This supplement amends the expiration date of FPMR Temporary Regulation A-25, Supplement 2.

2. **Effective date.** This regulation is effective October 1, 1988.

3. **Expiration date.** This regulation expires November 29, 1988.

4. **Explanation of changes.** The expiration date in paragraph 3 of FPMR Temporary Regulation A-25, Supplement 2, is amended to read November 29, 1988. Supplement 3 is canceled.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88-24171 Filed 10-19-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 88-030]

RIN 2115-AC98

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 46 CFR Part 67 to ensure that the vessel documentation regulations are consistent with the provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 ("the Act"). The Act makes substantive changes to the laws affecting the documentation of vessels generally and, in particular, vessels engaged in the commercial fishing industry, and has retroactive effective dates for many of its provisions. This final rule amends existing regulations which are inconsistent with the Act and conforms them to current law.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander Robert Bruce, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1492. Normal Office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this rulemaking. In accordance with 5 U.S.C. 553(b), the Coast Guard finds that notice and opportunity for comment are unnecessary and contrary to the public interest. This rulemaking simply implements new vessel documentation requirements mandated by statute. The Coast Guard has also determined that good cause exists under 5 U.S.C. 553(d), for making this rulemaking effective in less than 30 days after publication. The statutory changes are already in effect and some are effective retroactively. This rulemaking reflects the administrative practice which has been followed since enactment of the new law.

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant Commander Gregory L. Oxley, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in a specified trade. The evidence of nationality is the Certificate of Documentation. One or more licenses endorsed on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in a specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is eligible for documentation generally and eligible for the specific license or licenses requested; and (c) issues certificates of documentation to eligible vessels.

On January 11, 1988, the President signed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, (Pub. L. 100-239, 101 Stat. 1778 (1988)) ("the Act") into law. The new law, among other things, amends the existing statutes pertaining to vessel documentation in several substantive ways. Many of the changes were retroactively effective and the remainder were effective immediately upon enactment. Many sections of the existing vessel documentation regulations found in 46 CFR Part 67 are in direct conflict with the amended statutes. The regulations are, therefore, in need of immediate amendment.

The only vessels which are eligible for documentation under United States law are those which are of at least five net tons and not registered under the laws of a foreign country. A vessel must also be owned by an individual United States citizen or an entity which meets prescribed citizenship criteria which vary with the nature of the entity and type of license. These criteria are listed in 46 U.S.C. 12102, as amended. A vessel which is eligible for documentation is eligible for a registry endorsement. There are additional eligibility criteria relating to both the vessel and its owner which must be met for the domestic trade entitlements evidenced by a fishery license, a coastwise license, and a Great Lakes license.

The majority of the required changes are being implemented by simply amending the existing vessel documentation regulation to track the new statutory language. These changes are unambiguous and not open to interpretation, and in most cases are retroactively effective. They are, therefore, being published without notice and public comment and are being made effective upon publication.

Since January 11, 1988, the Coast Guard has been following the statutory requirements in administrative practices relating to vessel documentation transactions.

Discussion of the Rule

Vessels of five net tons and over which engage in the fisheries are required to be documented under United States law with a fishery license. Prior to the Act, the term "fisheries" was defined to include only activities in the nature of planting, cultivating or harvesting marine animal or plant life in the territorial sea or the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811). The Act expanded the term "fisheries", however, to also include processing, storing, and transportation (except in foreign commerce) of marine animal or plant life. It also changed the jurisdictional description to "navigable waters of the United States or in the exclusive economic zone." Prior to the Act, vessels which engaged in processing, storing, and many forms of transportation activities were not required to be documented. If the vessel owner elected documentation under United States law, an appropriate endorsement would have been a Registry for which the eligibility criteria are not as stringent as for a fishery license. The net result of this change is to make documentation mandatory for a larger number of vessels. Section 67.01-1 is amended to include definitions of the terms "fisheries" and "coastwise trade" and to update the proper address for correspondence with the Coast Guard and the Customs Service on vessel documentation matters. Section 67.17-9 is being amended to clarify the nature of the activities for which a vessel must have a fishery license.

Prior to the Act, vessels that were eligible for documentation and built in the United States were eligible for a fishery license. A United States-built vessel could also be extensively modified or converted overseas and still retain eligibility for a fisheries license or its existing fishery entitlement. Under the provisions of the Act, however, work accomplished outside of the United States which is extensive enough to be considered a rebuilding results in a permanent loss of fishery privileges. In determining whether the work accomplished on a given vessel rises to the level of a rebuilding, the Act applies the same standard as has been historically used in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883). Section 67.17-9 is amended to reflect the

requirement that if a vessel eligible for a fishery license is rebuilt, it forever loses fishery entitlement unless the entire rebuilding is accomplished in the United States. Section 67.27-3 is also amended to require a vessel owner to make a filing with the Coast Guard when a vessel which has not previously lost its fishery privileges is altered outside the United States in a manner which gives rise to a reasonable belief that the vessel is rebuilt or when a major component of the hull or superstructure not built in the United States is added to the vessel.

The Act also changed the United States-built requirement for coastwise and Great Lakes trade eligibility. The law previously provided for a permanent loss of coastwise and Great Lakes trading privileges where a coastwise qualified vessel of over 500 gross tons was rebuilt outside of the United States. The Act eliminated the 500 gross ton threshold for loss of coastwise and Great Lakes eligibility due to foreign rebuilding. Sections 67.17-5(c)(3) and 67.17-7(c)(3) are amended to delete the references to 500 gross tons. Section 67.27-3 is amended to remove the reference to 500 gross tons and thereby require that all vessels which have not previously lost coastwise, Great Lakes, or fishery entitlement must make a filing under circumstances where a rebuilding may have occurred. The potential loss of entitlement and, therefore, the filing requirement do not apply to certain vessels which will be rebuilt prior to July 28, 1990. Owners seeking the application of this exemption are advised in a note to § 67.27-3 of the applicable procedure.

The Act also contains a saving clause which seeks to protect those who have relied on the previous state of the law and who made certain identifiable commitments toward rebuilding fishing, fish processing, and fish tender vessels in foreign shipyards. The so-called "grandfather" provisions allow the Coast Guard to issue a fishery license in certain well-defined instances notwithstanding the fact that a vessel may have been rebuilt outside of the United States. These provisions also allow the Coast Guard to issue a restricted fishery license to certain foreign-built vessels which allows only fish processing activities. Because this savings clause is of very limited applicability, its precise interpretation is not suitable for rulemaking of general applicability. The grandfather provisions require a vessel owner to demonstrate by reliable evidence that a commitment based on the previous law was made prior to July 28, 1987. Once a

vessel is determined to qualify for exemption under the savings clause, the exemption runs with the vessel. Determinations which apply to specific vessels have traditionally and properly been made on an *ad hoc* basis. A vessel owner who believes that one of the provisions of the savings clause may be applicable should seek a letter ruling from Commandant (G-MVI-6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

Prior to the Act, a vessel which was documented with either a coastwise or Great Lakes license could (subject to the laws regulating the fisheries) also be employed in the fisheries. The Act amends the statute to require that a vessel's Certificate of Documentation actually be endorsed with a fishery license in order to be employed in the fisheries. Sections 67.17-5 and 67.17-7 are amended to delete fisheries from the entitlement descriptions for coastwise and Great Lakes licenses, respectively. The Act also provides a scheme by which the endorsements on Certificates of Documentation will be brought into compliance with this new restriction. A description of this procedure is not within the scope of this rulemaking project. Affected vessel owners will be notified of this procedure directly by the Coast Guard prior to January 11, 1989.

Finally, the Act contains an American control section. The vessel documentation statute (46 U.S.C. 12102) now provides that a vessel owned by a corporation is not eligible for a fishery license unless the controlling interest (as measured by a majority of the voting shares in that corporation) is owned by individuals who are citizens of the United States. The interpretation and implementation of this provision is beyond the scope of this rulemaking. A notice of proposed rulemaking on this new American control requirement is the subject of a separate rulemaking project.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The regulations are merely changed to reflect amended statutory eligibility requirements for vessel documentation.

Federalism

These regulations have been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of this regulation. There is no significant economic impact, however, because the regulation recognizes the savings provisions of the statute. Those provisions serve to protect those who have made verifiable financial commitments based on the laws and regulations in existence prior to enactment of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987.

Paperwork Reduction Act

This rulemaking expands to fishing industry vessels the filing required of coastwise vessels for rebuild determinations in 46 CFR 67.27-3. The filing requirement for coastwise vessels has previously been approved by the Office of Management and Budget under Control Number 2115-0110. That control number will apply to this information collection requirement.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concludes that, under the categorical exclusion provision in section 2-B-3.h. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, an Environmental Impact Statement, or a Finding of No Significant Impact for this regulation is not required. This regulation is an administrative and procedural regulation which clearly has no environmental impact.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR Part 67 is amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for Part 67 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 12121; 46 U.S.C. App. 841a, 876, 927, 983; 49 CFR 1.46.

2. Section 67.01-1 is amended by revising the definition of "Commandant", adding the terms "coastwise trade" and "fisheries" in alphabetical order; and adding the complete address for the Customs Service in the note to read as follows:

§ 67.01-1 Definitions of terms used in this part.

Coastwise trade includes the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws.

Commandant means the Commandant of the United States Coast Guard.

Note: Submissions and correspondence made to the Commandant pursuant to this part should be addressed to Commandant (G-MVI-6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

Fisheries includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shell fish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

Note.—Rulings and interpretations concerning coastwise trade and the fisheries can be obtained from the U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (Attn: Carrier Rulings Branch).

3. Section 67.17-5 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 67.17-5 Coastwise license.

(a) A coastwise license endorsement entitles the vessel to employment in the coastwise trade and any other employment for which a registry, fishery, or Great Lakes license is not required.

(c) * * *

(3) It undergoes rebuilding outside of the United States.

4. Section 67.17-7 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 67.17-7 Great Lakes license.

(a) A Great Lakes license endorsement entitles the vessel to engage in the coastwise trade on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in any other employment

for which a registry, fishery, or coastwise license is not required.

(c) * * *

(3) It undergoes rebuilding outside of the United States.

5. Section 67.17-9 is amended by revising paragraph (a), the introductory text of paragraph (b), and adding a new paragraph (c) to read as follows:

§ 67.17-9 Fishery license.

(a) Subject to federal and state laws regulating the fisheries, a fishery license endorsement entitles the vessel to engage in the fisheries and to land its catch, wherever caught, in the United States.

(b) The following vessels, if at least 5 net tons, if wholly owned by a United States citizen or citizens, and if not restricted from the fisheries by paragraph (c) of this section, are eligible for a fishery license endorsement:

(c) A vessel otherwise eligible for a fishery license endorsement under paragraph (b) of this section permanently loses that eligibility if it undergoes rebuilding outside of the United States.

6. Section 67.27-3 is amended by revising the introductory text of paragraph (b) and adding a note to read as follows:

§ 67.27-3 Required application for rebuilt determination.

(b) The owner of a vessel which has not previously lost coastwise or fisheries privileges must file with the Commandant the items listed in paragraph (c) of this section if:

Note.—The purpose of the application required by this section is to enable the Coast Guard to determine whether the vessel has lost either coastwise or fisheries entitlement due to a rebuilding outside of the United States. The foreign rebuild prohibition with resulting loss of coastwise entitlement may not apply to certain coastwise qualified vessels of less than 500 gross tons which undergo rebuilding outside of the United States before July 28, 1990. The foreign rebuilding prohibition with resultant loss of fisheries entitlement may not apply to certain vessels for which identifiable financial commitments were made prior to July 28, 1987. A more definitive description of these exemptions may be found in the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239; 101 Stat. 1778 (1988)). Vessel owners making application pursuant to this section may include with that application a request for a ruling on loss of coastwise or fisheries entitlement, as the case may be.

Dated: August 15, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-24356 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 80

[General Docket 79-144]

Radiofrequency Radiation From Ship Earth Stations; Correction

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; correction.

SUMMARY: This item is a correction of the Commission's *Third Report and Order* in General Docket 79-144. The summary of this *Order* was previously published in the *Federal Register*. The correction concerns: (1) Words inadvertently omitted from the ordering clauses; (2) modification of the wording of an amendment to § 1.1307(b) of the FCC's Rules; and (3) addition of a statement on public reporting burden that was inadvertently left out of the original summary.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653-8169.

SUPPLEMENTARY INFORMATION: The summary of the *Third Report and Order* in the above captioned proceeding (FCC No. 88-206, adopted June 20, 1988, released July 11, 1988), that was published in the *Federal Register* on July 27, 1988 (53 FR 28223), is corrected as follows:

1. The following statement was inadvertently omitted after the first paragraph of "Supplementary Information:"

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget,

Office of Information and Regulatory Affairs, Washington, DC 20503.

2. The words "Parts 1 and" were inadvertently left out of the ordering clause beginning in the second column on page 28224. The correct version of that paragraph is:

Ordering clauses

Accordingly, it is ordered that, effective November 17, 1988, Parts 1 and 80 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, are amended as set forth below and that this amendment will be applicable to applications filed on or after this effective date.

PART 1—[CORRECTED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; Implement. 5 U.S.C. 552.

4. In § 1.1307, the note in paragraph (b) is correctly revised as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

(b) * * *
Note: Paragraph (b) shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A and G only), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other parts, subparts, or sections of the Commission's rules shall be categorically excluded from consideration under paragraph (b), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraph (c) or (d) of this section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24088 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-598; RM-5801]

Radio Broadcasting Services; Camden, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Camden, Arkansas, as that community's third local FM service, in response to a petition for rule making

filed on behalf of KJWH, Inc. Reference coordinates utilized for Channel 283A at Camden are 33-35-06 and 92-50-00. With this action, the proceeding is terminated.

EFFECTIVE DATES: November 18, 1988.

The window period for filing applications on Channel 283A at Camden, Arkansas, will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-598, adopted September 9, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by adding Channel 283A to Camden.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-24283 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-565; RM-5820]

Radio Broadcasting Services; Yellville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Yellville, Arkansas, and modifies the

Class A license of Scott Miller for Station KCTT-FM, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 249C2 at Yellville are 36-14-00 and 93-00-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau; (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-565, adopted September 9, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Yellville, Arkansas, is amended by removing Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-24285 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-12; RM-5951]

Radio Broadcasting Services; Pelican Rapids, MN, and Milbank, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281C2 to Pelican Rapids, Minnesota, as that community's first FM broadcast service in response to a petition filed by Heart of the Lakes Radio. Channel 281C2 can be allotted to Pelican Rapids consistent with the Commission's

spacing requirements provided there is a site restriction 7.6 kilometers south of the community. The coordinates used for Channel 281C2 are 46-30-00 and 95-05-00. The Notice indicated it would be necessary to delete Channel 282C1 from Milbank, South Dakota, in order to accommodate Channel 281C2 at Pelican Rapids, for which Midland Communications held a construction permit that has since been cancelled. A new window was opened for Channel 282C1 at Milbank on March 28, 1988. Tobin Broadcasting Company has filed an application for the channel at Milbank at a site that does not conflict with Channel 281C2 at Pelican Rapids (880429ME). Therefore, it is no longer necessary to make a substitution of channels at Milbank. With this action, this proceeding is terminated.

DATES: Effective November 18, 1988; The window period for filing applications will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-12, adopted September 9, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by adding Channel 281C2, Pelican Rapids.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-24286 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-489; RM-5460, RM-5490, RM-5831, RM-5832, RM-5833]

Radio Broadcasting Services; Canton, Elmwood, Farmington, and Pekin, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 300B1 for Channel 252A at Canton, IL, and modifies the license for Station WBYS-FM, at the request of Fulton County Broadcasting Company. Additionally, Channel 247B1 is allotted to Elmwood, IL, at the request of Centurion Broadcasting of Illinois, Channel 238B1 is substituted for Channel 237A at Perkin, IL, at the request of Petaz Communications, Inc., and the license of Station WGLO(FM) modified accordingly, and Channel 243A is substituted for Channel 239A at Farmington, IL to accommodate the Pekin modification. A proposal to allot Channel 265B1 to Canton, IL, as requested by Metrocom Communications Corporation, is denied. Reference coordinates used in our determinations are set forth in the Supplementary Information, *infra*. With this action, the proceeding is terminated.

DATES: Effective November 18, 1988. The window period for filing applications on Channel 247B1 at Elmwood, Illinois, will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process at Elmwood, Illinois, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-489, adopted September 14, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also

be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Channel 300B1 at Canton, IL requires a site restriction 16.6 kilometers (10.3 miles) south of the community. Reference coordinates at that site are 40-24-24 and 90-01-04; the city reference point at 40-46-54 and 89-58-00 was used for Channel 247B1 at Elmwood, IL; Channel 243A at Farmington meets the spacing requirements to each applicant's site, *i.e.*, 40-46-46 and 89-59-11 (File No. 871104ME) and 40-42-51 and 89-59-11 (File No. 871106MC); and reference coordinates used for Channel 238B1 at Pekin are those of the licensed site for Station WGLO(FM) at 40-36-23 and 89-32-20.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Illinois is amended as follows: under Canton, remove Channel 252A and add Channel 300B1; add Channel 247B1, Elmwood; under Farmington, remove Channel 239A and add Channel 234A; under Pekin, remove Channel 237A and add Channel 238B1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-24284 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-254; RM-5724]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 250C2 to Garapan, Saipan, at coordinates North Latitude 15-10-44 and East Longitude 145-45-00, at the request of RSI Corporation. With this action, this proceeding is terminated.

DATES: Effective November 18, 1988; The window period for filing applications will open on November 21, 1988, and close on December 21, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-254, adopted September 14, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Garapan, Saipan, Channel 250C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-24143 Filed 10-19-88; 8:45 am]

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Proposed Rules

Federal Register

Vol. 53, No. 203

Thursday, October 20, 1988

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Food Distribution Program Regulations (7 CFR Part 250) by: (1) Improving the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies; (2) establishing mandatory criteria to be used by distributing agencies in determining service fees; and (3) establishing minimum performance standards to be followed by distributing agencies responsible for intrastate distribution of donated commodities. These proposed changes will improve the distribution of commodities to recipient agencies. These proposed amendments would implement the remaining provisions of Pub. L. 100-237 not already addressed in the Federal Register "Notice of Implementation of Pub. L. 100-237" which was published April 19, 1988 (53 FR 12794), the first Federal Register interim rulemaking published on June 16, 1988 (53 FR 22466) and the second Federal Register interim rulemaking published on July 21, 1988 (53 FR 27469).

DATE: To be assured of consideration, comments must be received or postmarked on or before December 19, 1988.

ADDRESS: Comments should be sent to: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to these rules may be inspected at 3101 Park Center

Drive, Room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT:

Susan E. Proden, Chief, Program Administration Branch at Area Code (703) 756-3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than \$100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and the final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the additional recordkeeping and reporting requirements contained in the rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584-0007.

Background

On January 8, 1988, President Reagan signed Pub. L. 100-237, "The Commodity Distribution Reform Act and WIC Amendments of 1987." The legislation is the first devoted primarily to the Commodity Distribution Program

administered by the U.S. Department of Agriculture. The purpose of the legislation is to improve the manner in which commodities purchased by the Department are distributed to recipient agencies, to improve the quality of commodities and to ensure that such distribution is responsive to the needs of the recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market. This proposed rule contains the amendments necessary to implement the provisions in sections 3(b)(1)(B), 3(d)(1)-(4) and 3(e)(1)(A)-(B) of Pub. L. 100-237. Public Law 100-237 requires that regulations be promulgated to implement these sections within 270 days of enactment of the law. This rule contains several of the most complex provisions contained in the law. Comments are being solicited to assist FNS in developing regulations which will provide for a more efficient, effective, and uniform operation of the Food Distribution Program. For further information concerning the Department's actions to date in implementation of Pub. L. 100-237, see the Federal Register "Notice of Implementation of Pub. L. 100-237" which was published on April 19, 1988 (53 FR 12794), the first Federal Register interim rule published June 16, 1988 (53 FR 22466) and the second Federal Register interim rule published July 21, 1988 (53 FR 27469).

Discussion of the Proposed Rule

In an effort to improve the distribution of commodities to schools for the National School Lunch Program (NSLP), as well as improving the distribution of commodities for other nutrition programs, the Department is proposing changes to the current Food Distribution Program Regulations (7 CFR Part 250) concerning the use of commercial warehousing and delivery systems, mandatory criteria for establishing service fees and minimum performance standards for distributing agencies.

System For Warehousing And Distributing Donated Foods

Section 250.14(a) of the current regulations states that distributing agencies, subdistributing agencies and recipient agencies shall provide proper facilities for the handling, storage and distribution of donated food which meet

certain standards. The actual method(s) of storage and distribution used in each State is currently determined by the distributing agency.

The purpose of the Commodity Distribution Reform Act and WIC Amendments of 1987 is to improve the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies, the quality of the commodities that are distributed, and the degree to which such distribution responds to the needs of the recipient agencies. Among other things, section 3(d) of Pub. L. 100-237 states that "the Secretary shall by regulation require each State distributing agency to—(1) evaluate its warehousing and distribution systems for donated commodities; (2) implement the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies; (3) use commercial facilities for providing warehousing and distribution services to recipient agencies unless the State applies to the Secretary to use other facilities, showing that other facilities are more cost effective and efficient; * * *

Under the current regulations, delegation of the administrative responsibility for determining the method used to warehouse and distribute commodities to the distributing agencies has resulted in widely varying forms of organization, operating procedures and approaches. The Department has received criticism from local school food authorities (SFAs) over the past several years about the costs of transporting, storing, handling and processing donated commodities into usable products after they have been delivered to the State and the resulting excessive charges to SFAs. Some SFAs claim that the cost of donated foods may actually be higher than the cost of comparable, locally acquired products because of the manner in which the State warehouses and distributes the food.

The Food Distribution Program has been the subject of a number of studies over the past two decades. Among the objectives of the studies were evaluations of the responsiveness of the program to the needs of SFAs and other recipient agencies. One thing apparent in each study was that each distributing agency responsible for the Food Distribution Program has a unique cost profile and offers widely varying quality of service to recipient agencies.

Since 1980, FNS has sponsored reviews of the commodity distribution systems of 22 distributing agencies. The resulting reports provided participating

States with a review and analysis of State operations and recommendations for improvements. Each study provided a generalized description of the State commodity distribution system, including an estimate of the overall cost of the system. As a comparison, the cost of using commercial facilities was also estimated. For the purpose of this rule, commercial facilities refers to commercial enterprises which store and deliver food. Most of the studies concluded with a recommendation to integrate the distribution of donated commodities with the distribution of commercially supplied food. In general, the reviews found that since commercial systems supply three-quarters of the food acquired by schools already, basic economies of scale can be tapped to provide donated commodities at lower cost by using the existing commercial channels for distribution. As a result of these studies, 11 distributing agencies converted their warehousing and distribution systems to commercial systems. Recipient agencies in these States are receiving better service, such as more frequent deliveries, and are paying less for the service than they paid for the previous systems.

In 1987, a study was conducted to identify the characteristics that differentiate one distributing agency's warehousing and distribution system from another. A central purpose of this study was to examine the extent of variation in the nature of the distribution systems used by the distributing agencies, the operating costs of these systems and the level of benefits provided the recipient agencies.

The findings indicate that distribution systems which rely primarily on the use of commercial facilities are superior in several respects to other systems. They tend to be less costly and result in more frequent deliveries. Per unit expenses for the commercial facilities were 24 percent below the system with the next lowest expense level. On average, commercial systems delivered to recipient agencies 32 times in 1985-86 compared to 12 times for State-contracted warehousing and delivery systems and 11 times for State-owned and operated warehousing and delivery systems. Also, recipient agencies serviced by commercial systems needed less storage and internal distribution capability.

In an effort to achieve more uniform levels of performance in the distribution of donated food, to reduce costs and to comply with section 3(d) of Pub. L. 100-237, this proposed rule revises § 250.14 to require distributing agencies to use the most cost effective and efficient system for providing warehousing and

distribution services to recipient agencies. The proposed rule further provides that if non-commercial facilities are proposed to be used that the distributing agency apply to the Secretary for approval showing that other facilities are more cost effective and efficient.

All distributing agencies will be required to (1) evaluate their existing system; (2) compare their existing system with a comparable commercial system and (3) implement the most cost effective and efficient system. The following information must be obtained as part of the evaluation of the system(s) currently in place: (1) A description of the principal warehousing/delivery techniques used by the distributing agency. The description should include (a) the frequency of delivery available; (b) the timeframes for making deliveries; the type of delivery service offered (to the loading dock or placement in the storeroom); (d) the system for recipient agencies to order specific amounts of food from available inventory; (e) the system for handling recipient agencies complaints; and (f) the system for recipient agencies to offer input regarding other services they may find desirable; and (2) an itemized list of all costs incurred in administering the Food Distribution Program. These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses. These expenses may include fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Guidelines for evaluating current warehousing and distribution systems and identifying recipient agency costs will be provided by FNS. The initial system evaluations must be submitted to the appropriate FNSRO by June 30, 1989 and updates must be submitted each June 30 thereafter.

The next step for any distributing agency which does not currently have a system that utilizes commercial facilities to provide a minimum level of service is to compare their current warehousing

and distribution system with comparable commercial alternatives. Section 3(d) (2) and (3) of Pub. L. 100-237 must be considered together by the distributing agency in making the decision to justify use of the State's existing system or to convert to a commercial system. In order to meet the requirements of the law, distributing agencies must obtain information on the cost of commercial warehousing and distribution or delivery of commodities in their State. Distributing agencies are required to utilize commercial facilities unless they can prove that another system is more efficient and cost effective. Price information from commercial facilities must cover a minimum level of service. This minimum level of service must consist of the transportation, storage and handling of donated food from time of delivery by the Department to the distributing agency until delivery to recipient agency's centralized storage facility or individual preparation sites. In addition, the delivery of food to recipient agencies must take place monthly at a minimum. The cost of the minimum level of service under the distributing agency's current system must then be compared with the costs of obtaining this minimum level of service from commercial facilities. If desired, the distributing agency may base its cost comparison on a level of service in excess of the minimum (such as more frequent deliveries) and/or services not currently provided; in any case, the comparison must be made of the cost of providing a *comparable* level of service under the existing system versus a commercial system. If a distributing agency is unable to locate any commercial facilities expressing interest in providing the minimum level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities.

The above mentioned data regarding the cost of the current warehousing and distribution system and the cost for equivalent commercial warehousing and distribution facilities must be submitted to FNS for review. Also, at that time, the distributing agency should indicate their intentions to convert to a commercial system or remain with their existing warehousing and distribution system.

Distributing agencies that can establish and document that a non-commercial warehousing and distribution system which meets the minimum level of service is more cost efficient and effective or that

commercial facilities are unavailable, must apply to the appropriate FNSRO for approval to use that system. Each request will be evaluated on a case by case basis. All distributing agencies opting not to utilize commercial facilities for warehousing and delivery of food must request approval by June 30, 1989.

Approval to use an alternative system will be granted for no more than one school year. After this time, the distributing agency must implement a commercial warehousing and distribution system that is more cost efficient or effective or again apply to the FNSRO for approval to use an alternative system by June 30 of each year.

Distributing agencies will be required by § 250.15(a)(5) to implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1990. However, if at any time FNS determines that the warehousing and distribution system in place is not cost effective, based on the information submitted in accordance with § 250.14(a), the distribution charge information submitted in accordance with § 250.15(a)(2) or other information, the distributing agency will be required to reevaluate its system in accordance with § 250.14(a) (2) and (3) within 90 days of notification by the FNSRO.

Distribution Charges

Section 3(e)(1)(A) of Pub. L. 100-237 requires the Secretary to provide, through regulation, mandatory criteria for fees charged to recipient agencies based on national standards and industry charges (taking into account regional differences) to be used by distributing agencies for storage and deliveries of commodities.

Under § 250.15(a)(1) of the current regulations, recipient agencies may be required to pay part or all of the intrastate costs of distribution through a system of charges assessed by the distributing or subdistributing agency. Any system of fees operated by the distributing or subdistributing agency must be reviewed by FNS. The allowable uses of distribution charges are discussed in § 250.15(f)(2).

The current regulations also limit the assessment of intrastate storage and transportation charges to the distributing or subdistributing agency's direct costs for intrastate storage and transportation minus any amount that the Department provides for such purpose. This limitation is based on the statutory requirement to this effect in section 208 of the Temporary Emergency Food Assistance Act of 1983 and applies to the donation of any bonus commodity

in any of the Department's nutrition programs.

Consistent with the new requirement regarding mandatory fee criteria and the Temporary Emergency Food Assistance Act fee limitation, the Department is proposing to amend § 250.15(a)(1) to clarify the types of costs for which distributing and subdistributing agencies may assess distribution charges and to require distributing and subdistributing agencies to submit to the FNSRO for approval each May 1 a description of their proposed system for assessing fees, including the data used in calculating the rate for the upcoming school year. Any proposed changes in the distribution charges during the school year must also be submitted for FNSRO approval.

Under this proposed rule, the "direct costs for intrastate storage and distribution" include but are not limited to those program costs referenced in § 250.15(f)(2) (transportation, storage and handling of donated foods, salaries of persons directly connected with the program and other program related expenses). Examples of other program-related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing service, computer services and the costs of providing program services to recipient agencies, such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Distribution charges may not be assessed for costs which would be unallowable under the Cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative Expense (SAE) funds, State or local appropriated funds, or any other funds available to the distributing or subdistributing agency to administer the Food Distribution Program.

Under the proposed rule, distributing and subdistributing agencies may not set distribution charges as a percentage of the value of commodities received by a particular recipient agency. The cost of warehousing and distributing donated food has no direct relationship to the value of the food. Storage and distribution fees are typically charged on a per unit or per weight basis. The Department believes that distribution charges should be distributed among recipient agencies based on the volume of food received by each recipient agency, as measured on a unit or weight basis.

Under § 250.15(a)(1) of the proposed rules, all distributing and subdistributing agencies assessing distribution charges would be required to submit a description of their proposed system with all data used in calculating the rate for the upcoming school year to the appropriate FNSRO for approval. In reviewing the submissions, the FNSRO will compare the commodity transportation, storage and handling portion of the distribution charges with average commercial fees for a comparable level of service. The administrative and service cost portion of the charges will be compared on a State by State basis. If a distributing/subdistributing agency's distribution charge is determined to be excessive or incorporates inappropriate costs, the distributing/subdistributing agency will be required to reduce the fee or submit further justification to the FNSRO that the fee is essential to cover allowable costs and services. This further justification shall include information from recipient agencies regarding their satisfaction with the services provided.

It should be noted that the current TEFAP statute and regulations (§ 204(c)(5) of the Temporary Emergency Food Assistance Act and § 251.9(d)) prohibits States from assessing any fees for the distribution for donated foods to emergency feeding organizations.

Performance Standards For Distributing Agencies

Section 3(e)(1)(B) of Pub. L. 100-237 requires the Secretary to provide minimum performance standards to be followed by State agencies responsible for intrastate distribution of donated commodities and products.

Even before the passage of Pub. L. 100-237, one important area of the commodity program that the Department targeted for improvement is the failure of some distributing agencies to provide basic services to recipient agencies. In March 1987, a draft set of standards was developed at a meeting on "Operation Excellence" at which representatives of the National Association of State Agencies for Food Distribution, the American School Food Service Association and USDA agreed on proposed standards of practice. Delegates at this meeting agreed that schools do not always receive the service they feel they need from distributing agencies and that uniform standards were needed to ensure that minimum service levels are provided. Four areas of distributing agency performance were addressed at the meeting. They included (1) communication and administration, (2) ordering and allocation, (3) distribution

and delivery and (4) quality and variety of food. Comments on the proposed standards of practice were collected from all interested parties and were shared with the States in the Fall of 1987. A national meeting was held in November 1987 to assist States with implementation.

During School Year 1988, these standards of practice were implemented on a voluntary basis. FNS believed this represented an important first step that would lead to major improvements in the Food Distribution Program. By using the voluntary standards, FNS believed distributing agencies would be able to measure the level of service they offer school food authorities and other recipient agencies and to make improvements where necessary.

This proposed rule amends the Part 250 regulations by establishing a new § 250.24 which establishes minimum performance standards which must be followed by distributing agencies and to be used by the FNSROs in conducting management evaluations of distributing agencies. The rule proposes establishing seven basic performance standards.

The Department has taken into account the recommendations of the American School Food Service Association and the National Frozen Food Association in establishing minimum performance standards distributing agencies must meet.

It should be understood that the entire Part 250 regulations constitute a performance standard that distributing agencies must meet. The Department is proposing these minimum performance standards which place emphasis on the basic services that must be provided to recipient agencies. Therefore many of the performance standards parallel or supplement requirements found elsewhere in Part 250. Where pertinent, cross references to these other provisions have been included.

The first, *Program Management and Evaluation*, will establish a standard ensuring proper administration of the Food Distribution Program. Under this requirement, distributing agencies will be responsible for conducting reviews in accordance with § 250.19 of this part. Also, distributing agencies will be required to assess the adequacy of the service provided to recipient agencies.

In the second area, *Information Dissemination*, the standard is established to ensure that recipient agencies have access to all information needed for informed participation in the program. Under this requirement, distributing agencies will be responsible for disseminating program information relative to (1) current program

regulations, (2) summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets, (3) results of test evaluations and surveys, (4) advisory council membership recommendations, (5) recipes and (6) written procedures for ordering commodities, handling out-of-condition commodities or unacceptable commodities (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

The third area, *Fiscal Responsibility*, will establish a standard to ensure fiscal accountability. Under this standard, distributing agencies will be required to maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices and Office of Management and Budget circulars. Also, under this standard, distributing agencies will be required to submit information relative to distribution charges to FNS in accordance with § 250.15(a)(1) of this part.

The fourth area, *Ordering and Allocation*, will establish a standard ensuring that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Under this standard, distributing agencies will be required to (1) obtain and utilize semi-annual commodity acceptability information in accordance with § 250.13(k) of this part; (2) provide recipient agencies with information regarding commodity availability; (3) provide recipient agencies with information on commodity assistance levels; (4) order and allocate donated food based on participation data; (5) ensure availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies; (6) permit recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency when time permits; (7) permit recipient agencies to change orders for Group B and unlimited bonus commodities prior to submission of an order to the Department; (8) provide recipient agencies with ordering options and commodity values (§ 250.13(a)(5)); (9) offer schools participating in the NSLP the per-meal value of donated food in accordance with § 250.48(c) of this part and (10) consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity

product forms, quality, packaging and quantities. The last requirement implements section 3(d)(4) of Pub. L. 100-237 which provides that "the Secretary shall by regulation require each State distribution agency to * * * consider the preparation and storage capabilities of recipient agencies when ordering donated commodities, including the capabilities of such agencies to handle commodity product forms, quality, packaging, and quantities * * *"

In the fifth area, *Warehousing and Distribution* the standard is being developed to ensure that the warehousing and distribution system utilized by the distributing agency is efficient, cost effective and responsive to the needs of recipient agencies. Distributing agencies will be required to evaluate their current warehousing and distribution systems in accordance with § 250.14(a) of this part. Current regulations require distributing agencies to use warehouses, vehicles and inventory management practices which safeguard the quality of the donated food (§ 250.14). The standard will require distributing agencies to work with recipient agencies capable of receiving direct shipments to order donated food into their warehouses.

They must also solicit information regarding individual delivery needs of recipient agencies and, to the extent practicable, accommodate those needs. Distributing agencies must also maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies and make donated foods available at least monthly (§ 250.13(a)(6)).

In the sixth area, *Disposition of Damaged or Out-of-Condition Commodities*, will establish a standard ensuring that an effective system is in place for gathering information and responding to recipient agency complaints. Under this standard, distributing agencies will be required to establish a system for handling complaints, notifying the Department of any commodity losses in accordance with § 250.13(f) of this part and arranging for the replacement of lost commodities in accordance with § 250.13(g).

The last area, *Processing*, will establish a standard ensuring that distributing agencies administer an acceptable processing program. Under this standard, distributing agencies will be required to inform recipient agencies annually of processing options available to them and assist in facilitating participation in State or National

processing contacts. Distributing agencies will also be required to test processed end products prior to entering into a processing contract and monitor the acceptability of processed end products as products as required in § 250.30(b)(1) of this part.

Corrective Action Plans

Section 3(b)(1)(B) of the Act requires the implementation of procedures to monitor the manner in which the distributing agencies carry out their responsibilities. The Department will meet this monitoring requirement through its normal management evaluation process. Management Evaluations are reviews conducted periodically by the FNSROs of a distributing agency's operations. In addition, the Department is proposing to amend § 250.19 to require submission of corrective action plans whenever a distributing agency is found to be out of compliance with any performance standard or other provision in this Part.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 is proposed to be amended to read as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

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

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79-396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91-665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 985-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16 Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766) sec. 1304a, Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301); Pub. L. 100-237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. In § 250.14, the section title is revised, paragraphs (a), (b), (c), (d), (e) and are redesignated (b), (c), (d), (e) and (f), respectively, and a new paragraph (a) is added to read as follows:

§ 250.14 Warehousing and distribution of donated foods.

(a) *Duties of distributing agencies.*—(1) *Use of cost efficient and effective facilities.* Distributing agencies shall use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. For the purpose of this part, commercial facilities are defined as commercial enterprises that provide for commercial warehousing and delivery.

(2) *Evaluation of current systems.* All distributing agencies shall evaluate their current warehousing and distribution systems. The evaluation of the system in place shall, at a minimum, include the following information:

(i) A description of the principal warehousing/delivery techniques used by the distributing agency. The description shall include:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered (to the loading dock or placement in the storeroom);

(D) The system for recipient agencies to order specific amounts of food from available inventory;

(E) The system for handling recipient agencies complaints; and

(F) The system for recipient agencies to offer input regarding other services they may find desirable; and

(ii) All costs incurred in administering the Food Distribution Program.

These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses. These expenses shall include fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Initial evaluations shall be completed by June 30, 1989 and

updates shall be submitted each June 30 thereafter.

(3) *Comparison of existing system with commercial systems.* All distributing agencies which do not use commercial facilities for a minimum level of warehousing and distribution services shall compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system. The cost comparison shall be made between the cost of providing a minimum level of service under its current system with the cost of obtaining this minimum level of service from commercial facilities. This minimum level of service shall consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites and shall include monthly deliveries of donated food to all recipient agencies. A distributing agency may base its cost comparison on a level of service in excess of the minimum and/or services not currently provided; in all cases, the comparison must be made on the costs of providing a *comparable* level of service under the existing system (as identified in § 250.14(a)(2)) versus a commercial system. If a distributing agency is unable to locate any commercial facilities expressing interest in providing the minimum level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities. All data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities shall be submitted to FNS for review by June 30, 1989 and each June 30 thereafter.

(4) *Approval to use other systems.* Distributing agencies who opt not to implement a commercial warehousing and distribution system shall apply to the FNSRO for approval to use other facilities providing that other facilities are more cost effective and efficient. Each request will be considered on a case by case basis. The FNSRO will inform the distributing agency whether it can continue to use the alternative system. Approval to use an alternative system will be granted for no more than one year. After one year, the distributing agency shall implement a commercial warehousing and distribution system that is more cost effective and efficient or apply to the FNSRO for approval to continue to use an alternative system.

All distributing agencies opting not to utilize commercial facilities for warehousing and distribution of donated food shall request approval by June 30, 1989 and each June 30 thereafter.

(5) *System implementation.* Distributing agencies shall implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1990. If at any time FNS determines that the warehousing and distribution system in place is not cost effective based on the information submitted in accordance with § 250.14(a), the distribution charge information submitted in accordance with § 250.15(a)(2) or other information, the distributing agency will be required to reevaluate its system in accordance with § 250.14(a)(2) and (3) of this part within 90 days of notification by the FNSRO.

3. In § 250.15, paragraph (a)(1) is revised to read as follows:

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Except as provided in paragraph (a)(2) of this section, recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated food through distribution charges assessed by the distributing or subdistributing agency. Distributing and subdistributing agencies assessing distribution charges shall submit a description of their system with supporting allowable cost data used in calculating the rate to be used for the upcoming school year to the FNSRO for approval. This description and data shall be submitted by May 1 of each year. Before making any changes to the distribution charges during and school year, the distributing/subdistributing agency shall submit to the FNSRO for approval a description of the change together with supporting data used to calculate the change. Allowable costs include but are not limited to those program costs referenced in § 250.15(f)(2) of this part (transportation, storage and handling of donated foods, salaries of persons directly connected with the administration of the program and other program related expenses). Examples of other program related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc. Distribution charges

may not be assessed for costs which would be unallowable under the Cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative Expense (SAE) funds, State or local appropriated funds or any other funds available to the distributing or subdistributing agency to administer the program. Distributing charges may not be based solely on a percentage of the value of the commodities distributed. FNS shall review the information and inform the distributing agency of the appropriateness of its distribution charges. If it is determined that a distributing agency's proposed distribution charges are excessive or incorporate inappropriate costs, the distributing/subdistributing agency will be required to adjust the distribution charges to an appropriate level or submit further justification sufficient to satisfy the FNSRO that the proposed distribution charges are essential to cover allowable costs and services. This further justification shall include information from recipient agencies regarding their satisfaction with the services provided. Distribution charges, including any excess distribution charges which may accrue (as defined in paragraph (f)(4) of this section) shall be used solely in accordance with the provisions of paragraph (f) of this section.

4. In § 250.19, a new paragraph (d) is added to read as follows:

§ 250.19 Reviews.

(d) *Corrective actions plans.* Corrective action plans shall be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of this part. The corrective action plan shall identify the corrective actions and the timeframes needed to correct the deficiencies found by the FNSRO during the review. The plan shall be written, signed by the proper official in the State, and submitted to the FNSRO within 60 days following receipt of the management evaluation report by the distributing agency. Extensions beyond 60 days may be made, for cause, with written justification to and approved by the FNSRO.

5. A new § 250.24 is added to Subpart B which reads as follows:

§ 250.24 Distributing agency performance standards.

This section establishes minimum performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to recipient agencies. The minimum standards include the following:

(a) *Program management and evaluation.* Distributing agencies shall conduct reviews in accordance with § 250.19 of this part. Distributing agencies shall also assess the adequacy of the service provided to recipient agencies.

(b) *Information dissemination.* Distributing agencies shall provide recipient agencies with information needed for informed participation in the program. Distributing agencies shall provide program information relative to (1) current program regulations, (2) summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets, (3) results of any test evaluations and surveys, (4) advisory council membership recommendations, (5) recipes and (6) written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

(c) *Fiscal responsibility.* Distributing agencies shall maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practice and Office of Management and Budget circulars. Distributing agencies shall submit information relative to distribution charges to FNS in accordance with § 250.15(a) of this part.

(d) *Ordering and allocation.* Distributing agencies shall ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Distributing agencies shall be responsible for (1) obtaining and utilizing semi-annual commodity acceptability information in accordance with § 250.13(k) of this part; (2) providing recipient agencies with information regarding commodity availability; (3) providing recipient agencies with information regarding commodity assistance levels; (4) ordering and allocating donated food

based on participation data for those programs which serve meals; (5) ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies; (6) permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits; (7) permitting recipient agencies to change orders for Group B (grain, dairy, peanut and oil products) and unlimited bonus commodities prior to submission of an order to the Department; (8) providing recipient agencies with ordering options and commodity values (§ 250.13(a)(5)); (9) offering schools participating in the National School Lunch Program the per meal value of donated food in accordance with § 250.48(c) of this part and (10) consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quality, packaging and quantities.

(e) *Warehousing and distribution.* Distributing agencies shall use a warehousing and distribution system that is efficient, cost effective and responsive to the needs of recipient agencies in accordance with § 250.14(a) of this part. In addition, distributing agencies shall work with recipient agencies capable of receiving direct shipments to order donated food into their warehouses. They shall also solicit information regarding the individual delivery needs of recipient agencies and maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies and make donated foods available at least monthly (§ 250.13(a)(6)); however, the distributing agency shall not be held liable for delays in deliveries of donated food when such delays are due to late deliveries of donated food to the distributing agency by the Department.

(f) *Disposition of Damaged or out-of-condition commodities.* Distributing agencies shall establish a system for handling recipient agency complaints, notifying the Department of any commodity losses in accordance with § 250.13(f) of this part and arranging for the replacement of lost commodities in accordance with § 250.13(g).

(g) *Processing.* Distributing agencies shall administer an acceptable processing program in accordance with § 250.30 of this part. In addition, distributing agencies shall inform recipient agencies annually of processing options available to them in facilitating participation in State or

National processing contracts. Distributing agencies shall test end products prior to entering into a processing contract and shall monitor the acceptability of processed end products as required in § 250.30(b)(1) of this part.

Date: October 14, 1988.

Anna Kondratas,
Administrator.

[FR Doc. 88-24210 Filed 10-19-88; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-49]

Ohio Citizens for Responsible Energy, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: On December 1, 1987, the Ohio Citizens for Responsible Energy (OCRE), Inc., filed pursuant to 10 CFR 2.802 a petition for rulemaking. OCRE requested that the NRC amend 10 CFR 50.12(a)(2) to remove the provision which would permit the NRC to grant a licensee an exemption from a rule in 10 CFR Part 50 on the grounds that the rule imposes on the licensee "undue * * * costs * * * significantly in excess of those contemplated when the regulation was adopted, or * * * of those incurred by others similarly situated * * *". OCRE argues that the amendment it proposes is necessary to bring 10 CFR 50.12(a) into conformance with *UCS v. NRC*, 824 F.2d 108 (D.C. Cir. 1987), which held, among other things, that the NRC may not take economic costs into consideration in establishing or enforcing the safety standards required for "adequate protection" of the public health and safety. The issues raised by the petition have already been fully considered and resolved in the 1985 rulemaking on § 50.12 and the 1987-88 renewed rulemaking on the backfit rule, 10 CFR 50.109. The resolutions of the issues were in accordance with principles which either appear in, or are consistent with, *UCS v. NRC*. The NRC is denying the petition for the same reasons that the NRC rejected earlier arguments against the cost provision in § 50.12(a). In particular, because § 50.12(a)(1) explicitly bars any exemption which would threaten

"adequate protection," § 50.12(a) is in conformity with UCS v. NRC.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available for public inspection or copying in the NRC's Public Document Room, 2120 L Street, NW., Washington, DC, Monday through Friday, between the hours of 7:45 am and 4:15 pm.

FOR FURTHER INFORMATION CONTACT: Steven F. Crockett, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1600.

SUPPLEMENTARY INFORMATION:

The Petition

Section 50.12 of 10 CFR states, in pertinent part,

(a) The Commission may * * * grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; * * *

OCRE proposes that paragraph (a)(2)(iii) be deleted and the remaining subparagraphs of paragraph (a)(2) accordingly redesignated, and that a new paragraph (a)(3) be added to read as follows:

The Commission will not consider granting an exemption which has as a motivation or consequence cost savings or other financial benefits to licensees, and the Commission shall not consider any economic costs to licensees in its evaluation of any exemption request.

OCRE argues that, without the amendments it proposes, § 50.12(a)(2) will not be in conformity with the Federal Court of Appeals for the District of Columbia Circuit's decision, *UCS v. NRC*, 824 F.2d 108 (1987), which concerned the "backfit rule", 10 CFR 50.109. There the Court held, in pertinent part, that "the [Atomic Energy] Act precludes the NRC from taking costs into account in establishing or enforcing the level of adequate protection, but allows the NRC to consider costs in devising or administering requirements that offer protection beyond that level." 824 F.2d at 114.

OCRE asserts that "[t]here can be no doubt that the regulations in 10 CFR Part

50 form the basis of the adequate protection standard." Petition at 4. OCRE cites two judicial rulings to support its assertion: It claims that the Commission's Appeal Board "declared" that "the sine qua non of adequate protection to public health and safety is compliance with all applicable safety rules and regulations promulgated by the Commission." Petition at 4-5, quoting *Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station)*, ALAB-161, 6 AEC 1003, 1009 (1973). OCRE moreover says that it is "significant" that the Court in *UCS v. NRC* "placed major reliance on *Maine Yankee* in buttressing its interpretation of the Atomic Energy Act." Petition at 5, citing *UCS v. NRC*, 824 F.2d at 117.

On the basis of its assertion that compliance with the regulations is necessary for adequate protection, OCRE concludes that 10 CFR 50.12(a)(2)(iii) "stands in defiance" of the Court's ruling in *UCS v. NRC* because the rule "explicitly allows economic costs of compliance * * * to form a special circumstance justifying non-compliance with, by means of exemption from, the NRC's adequate protection standards." Petition at 5.

Reasons for Denial

The issues raised by OCRE in this petition were thoroughly discussed in the rulemaking leading up to the 1985 revision of § 50.12, and those issues were resolved in that rulemaking in accordance with principles which either appear in, or are consistent with, *UCS v. NRC*. In particular, OCRE's assumption that compliance with the regulations is necessary for adequate protection was considered and rejected by the Commission in the rulemaking in 1985 on § 50.12, and again in the renewed rulemaking in 1987-88 on the backfit rule, 10 CFR 50.109.¹

In the *Federal Register* notice setting forth the proposed revisions to § 50.12, then-Commissioner Asselstine, who soon thereafter dissented from promulgation of the backfit rule (50 FR 38097, 38106-110; September 20, 1985), proposed that the revisions include the cost provision OCRE now petitions to have deleted (50 FR 16506, 16510, col. 1; April 26, 1985). The purpose of the provision was not, as OCRE believes, to make way for "pleas of poverty" by utilities (see petition at 5). The provision focused not on the utility's financial condition but rather on the possible failure of the pertinent regulation to

foresee extraordinary costs. This part of the rule, and indeed the whole rule, simply acknowledges what is acknowledged in any reasonable jurisprudence, namely, that foresight is limited and, therefore, that any rule must make room for unforeseen exceptional situations.

In response, the Union of Concerned Scientists (UCS) argued that the Commission did not have statutory authority to consider economic factors in granting an exemption. On this ground, UCS opposed several provisions of the proposed revisions to § 50.12, not just Mr. Asselstine's cost proposal. See 50 FR 50764, 50767, cols. 2-3. Indeed, UCS went the larger step—fully consistent with the proposition that compliance with the regulations is necessary for adequate protection—and argued that the Commission had no authority to issue exemptions at all. *Id.* at 50766, cols. 2-3. UCS explicitly stated the assumption OCRE now relies on, namely, that "the regulations established the minimal requirements for safe operation of a nuclear power plant * * *." *Id.* at 50768, col. 1.

The Commission rejected UCS' assertions and in so doing enunciated propositions which have been either explicitly upheld by the Court in *UCS v. NRC* or are fully consistent with the Court's holdings.

First, the Commission emphasized that the rule "requires a safety finding that the exemption will not present an undue risk to the public health and safety * * *." It is only after these statutorily based findings have been made that the Commission may then consider whether the *additional* requirements for the grant of an exemption have been met, some of which include economic considerations." *Id.* at 50767, col. 3 (emphasis in original). In *UCS v. NRC*, the Court clearly held that the Atomic Energy Act permitted cost consideration once adequate protection was established. Noting that "no undue risk" and "adequate protection" were equivalent phrases, 824 F.2d at 109, the Court ruled that, "[i]f the Commission wishes to do so, it may order power plants already satisfying the standard of adequate protection to take additional safety precautions. When the Commission determines whether and to what extent to exercise *this* power, it may consider economic costs or any other factor." *Id.* at 118 (emphasis in original).

Second, the Commission explained the relation between adequate protection and compliance with the regulations:

¹ No purpose would have been served by soliciting public comment on issues already resolved in recent rulemakings. Thus the NRC has not sought public comment on OCRE's petition.

[W]hile it is true that compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety.

(50 FR at 50768, cols. 1-2; see also *id.* at 50771, col. 3.)

In the recent rulemaking to conform the backfit rule to the Court's holdings in *UCS v. NRC*, the Commission affirmed this account of the relation between adequate protection and compliance with the regulations. In that rulemaking, OCRE argued, as it does here, that the regulations "define" adequate protection. From this assertion, QCRE concluded that the Commission cannot apply cost-benefit considerations to a proposed rule without applying cost-benefit considerations in setting the standards of adequate protection, contrary to the Court's principal holding in *UCS v. NRC*. See 50 FR 20603, 20609, cols. 1-2. In response, the Commission said that

the rules do not, strictly speaking, "define" adequate protection, and they only presumptively assure it. Not only may there * * * be individual cases that require actions that go beyond what is necessary under the regulations to assure adequate protection, there will also be times when the NRC issues a rule which requires something beyond adequate protection. This follows directly from the Commission's power under section 161 of the Atomic Energy Act, affirmed by the Court, to issue rules or orders to "minimize danger to life or property." See 42 U.S.C. 2201; see also *UCS v. NRC*, 824 F.2d at 118. If a proposed rule requires something more than adequate protection, applying a cost standard to the proposed rule will not be introducing cost considerations into the setting of the adequate protection standard and is therefore permitted.

(*Id.* at 20609, col. 2.)

Similarly, if a rule requires something more than adequate protection, or if adequate protection can be secured by means other than those set forth in the rule in question, then consideration of unforeseen extraordinary costs in response to a request to a request for an exemption which would not present an undue risk to public health and safety does not introduce cost considerations into enforcing the adequate protection standard and is therefore permitted.

Neither of the two judicial decisions OCRE cites are to the contrary. In *Maine Yankee*, the principal issue was whether a licensing board had to look beyond compliance with the regulations to determine whether there was

reasonable assurance of adequate protection. The Appeal Board did not, as OCRE claims, "declare" that compliance with the regulations is a "sine qua non" of adequate protection. The Board was a good deal more restrained. It said that, "on the face of it," certain statements in the Atomic Energy Act "would appear to suggest" that compliance was the sine qua non of adequate protection. See 6 AEC 1009. From this hypothetically stated proposition, the Board concluded that, at least in the case before the Board, where no showing was made that compliance with the regulations fell short of adequate protection, "the demonstration of compliance with the regulations entitled the Board below to find adequate protection to the health and safety of the public." *Id.* at 1010. The Board hypothetically assumed here that compliance with the regulations was necessary for adequate protection, but the Board could just as easily have reached the same conclusion by hypothetically assuming that compliance with the regulations would provide an even greater level of safety than adequate protection.

Neither does *UCS v. NRC* support OCRE's claims. OCRE sees "significance" in the extent to which the Court "relied" on *Maine Yankee*. However, the Court uses *Maine Yankee* only to show that the Commission itself had long ago held that the Atomic Energy Act prohibited the consideration of economic costs in making adequate protection determinations. See 824 F.2d at 117. To make its point, the Court draws on a different part of *Maine Yankee* than OCRE does. See *Id.* The Court nowhere says that compliance with the regulations is necessary for adequate protection, nor does the Court even quote the language OCRE quotes from *Maine Yankee*. Indeed, it would have been surprising if the Court had said such a thing, for the Court affirms the Commission's power to require, by rule or in specific cases, more than adequate protection. See, e.g., *id.* at 118. From this it follows that some rules may require more than adequate protection and thus that exemptions from these rules may be granted on the specified costs grounds if the exemptions do not present undue risks to public health and safety.

Because the issues OCRE raises in its petition were fully considered in the 1985 rulemaking on 10 CFR 50.12 and were resolved in that rulemaking in accord with principles which either were affirmed by *UCS v. NRC* or are fully consistent with it, OCRE's petition to have § 50.12 amended is denied. Because the petition raises no new policy issue, and because the denial of

the petition relies wholly on existing Commission precedent, the denial is being issued over the signature of the Executive Director for Operations.

Dated at Rockville, MD, this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-24269 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 346

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; Foreign Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing changes to its regulations pertaining to insured branches of foreign banks. Substantial changes are proposed to the current provisions relating to exemptions from the deposit insurance requirement, the capital equivalency requirement, and the country exposure provision. Changes are also being proposed to the pledge of assets requirement and to the delegations of authority concerning it, as well as to miscellaneous provisions throughout the regulation.

DATES: Comments must be received by December 19, 1988.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Charles V. Collier, Assistant Director, or Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, (202) 898-6850 or (202) 898-6821, respectively, or Katharine H. Haygood, Senior Attorney, (202) 898-3732, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice has been submitted to the Office of Management

and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to John R. Keiper, Jr., Assistant Executive Secretary, Room 6108, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this proposed regulation is in § 346.19(e)(6). This information is required by the Federal Deposit Insurance Corporation to determine the type and amount of assets placed for safekeeping at a depository, as pledged assets, by a foreign bank. This information will be used to ensure compliance with section 5 of the Federal Deposit Insurance Act and with FDIC's regulatory requirements. The likely respondents are foreign banks which have insured branches and depositories for the pledge of assets by insured branches.

Estimated Total Annual Reporting and/or Recordkeeping Burden: 144 hours.

Estimated Average Annual Burden per Response: 1 hour.

Estimated Number of Responses: 144.

Estimated Annual Frequency of Responses: on occasion and semiannually.

Discussion

After a thorough review, under FDIC's regulatory review program, of its regulation dealing with foreign banks, 12 CFR Part 346, the FDIC is proposing changes to that regulation. In particular, substantial changes are proposed in regard to exemptions from the deposit insurance requirement, the current capital equivalency ledger account provision, and the country exposure provision. Other changes, primarily technical, are being proposed to provisions concerning the pledge of assets. There are also a number of proposed miscellaneous changes throughout the regulation.

The capital equivalency ledger account provision would be changed substantially. The current provision would be eliminated, and the title used previously in the regulation, *i.e.*, "asset maintenance," would be reinstated, with significant substantive changes being made in the requirements of the regulation. In lieu of the current requirement at § 346.20 that head office funds equivalent to 6% of the preceding quarter's average book value of the third

party liabilities of the branch be maintained, the proposal would require that an insured branch maintain eligible assets as determined by proposed § 346.20 in an amount not less than 106% of the preceding quarter's average book value of the branch's third party liabilities or, in the case of a newly established branch, the average book value of the branch's estimated liabilities for the first full quarter of operation. Assets would have to be payable in United States dollars, or in a currency freely convertible to United States dollars. Several changes would be made in regard to exclusions from the asset base. In addition to the current exclusion from eligibility of any asset classified "Loss," assets designated "Other Transfer Risk Problem," or classified "Substandard," "Doubtful," or "Value Impaired" would also be excluded, as would intangible assets.

The FDIC has decided to retain the requirement for daily maintenance. Domestic banks must maintain required levels of capital on a daily basis, and there is no compelling reason to allow for anything other than a continuous maintenance of the required asset level for insured branches. The FDIC has, in addition, decided to retain the requirement, both here and with respect to the pledge of assets, that there be a waiver of offset for certificates of deposit. After substantial internal study, the FDIC has determined that the requirement benefits the FDIC and should not be dropped.

It should be noted that the federal bank regulatory agencies are in the process of fashioning a new capital policy which is anticipated to take a risk-based approach to capital requirements. If a new capital policy is adopted the FDIC will at that time evaluate whether to apply the principles of that policy to insured branches of foreign banks.

The current restriction on country exposure at § 346.23 would be deleted and the country exposure exclusion in the current capital equivalency ledger accounts would not be reflected in the proposed asset maintenance requirement. Both in reference to the proposed asset maintenance and asset pledge provisions, however, the FDIC may require a higher ratio of eligible assets and/or an increase in pledged assets, respectively, based on the concentration of risk to any one borrower or group of related borrowers, or the concentration of transfer risk to any one country, including the country in which the branch's head office is located. The proposed changes would occur at proposed § 346.19(b)(3) and proposed § 346.20(a).

A number of additional changes are being proposed to the pledge of assets provision. Section 346.1(p) would state specifically that a depository may not be an affiliate of the foreign bank whose insured branch seeks to use that depository. Other proposed changes in § 346.19 relate specifically to the pledge of assets. Throughout the provisions concerning the pledge, either the term "pledge" or "place" would generally replace the term "deposit." Several changes would be made to § 346.19(b). The provision would expand on the current definition of value, require periodic computations only as of the last date of the second and fourth quarters, respectively, and no longer contain the statement regarding the two-day adjustment period, since that requirement is specified elsewhere in the regulation. Proposed § 346.19(c) would specify that the approval required for a depository to be used is prior written approval and, further, that the depository must be attorney in fact for the foreign bank for the purpose of transferring title to pledged assets to the FDIC. In regard to the assets which may be pledged under § 346.19(d), language would be added to indicate that any pledges are for the benefit of the FDIC or its designees and that assets must be denominated in United States dollars. Proposed § 346.19(d)(3) would allow the pledging of commercial paper rated P-2, as well as P-1. Changes would be made at § 346.19(d)(5) in regard to local government obligations. Those obligations would, under the proposal, be required to have a credit rating within the top two rating bands of a nationally-recognized rating service, with any conflict in the ratings to be resolved in favor of the lowest rating. Proposed § 346.19(d)(7) would allow notes issued by U.S. banks, bank holding companies, or insured branches to be included as assets eligible to be pledged if those notes have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in the ratings to be resolved in favor of the lowest rating). The notes would also have to be payable in the United States and issued by other than an affiliate of the pledging foreign bank.

Proposed § 346.19(e) would cover the original pledge, additional required pledges, substitution of assets, delivery of other documents, acceptance and safekeeping by the depository, reporting requirements, access to assets, release of assets, interest earned on assets, expenses of the agreement, substitution of the depository, and waiver of terms. The substance of the proposed

regulation is similar to that of existing § 346.19(e), with proposed technical changes and expansion of certain requirements. For instance, at proposed § 346.19(e)(6)(i)(B), the information in a foreign bank's certification would be expanded from that in the current regulation. The quarterly reports currently required at § 346.19(e)(2) (ii) and (iii) would now be semi-annual as specified in proposed § 346.19(e)(6)(ii). (Computation of the pledge as required at § 346.19(b) would be computed after the second and fourth quarters, respectively.) Proposed § 346.19(e)(7) simply expands on the FDIC's right of access in order to evaluate pledged assets. Proposed § 346.19(e)(10) would specify that if the foreign bank is not allowed to retain interest, the FDIC will specify the disposition of that interest. Proposed § 346.19(e)(12) would deal with the substitution of a depository and would replace the provision at current § 346.19(e)(10) dealing with the termination of the agreement.

Major changes are being proposed in the provision relating to exemptions from the deposit insurance requirement at § 346.6. It should be noted that the current regulation keys a number of provisions into the concept of the acceptance of an initial deposit. Branches, especially noninsured branches of foreign banks, should be cautioned that they must maintain records which clearly establish the amount of the initial deposit, since that concept exists in the current regulation and continues to exist in the proposed regulation. A change is being proposed at § 346.6(a)(1) which would allow exemption from deposit insurance for virtually any business entity, regardless of any size limitations such as those which currently exist. Current § 346.6(a)(4) would be eliminated since it is a grandfather provision which no longer applies. The "de minimus rule" which currently exists at § 346.6(a)(5) would be eliminated, and a checklist of exempt depositors would be substituted for that section. This checklist, found at proposed § 346.6(a)(5), allows an exemption for individuals who are not U.S. citizens but are residents in the United States if they are employed by certain listed organizations. Proposed § 346.6(a)(6) is the current § 346.6(a)(7) and exempts individuals who are not citizens and not residents of the U.S. at the time of the initial deposit.

Other miscellaneous changes are being proposed throughout the regulation. The proposal clarifies the definition of "foreign bank" at § 346.1(a) to conform with the current state of statutory law on the subject. An attempt

has been made in that definition to clarify the situation of those institutions which were considered to be foreign banks under the International Banking Act but are also domestic insured banks under the Federal Deposit Insurance Act; § 346.21, which currently speaks to this subject, would be eliminated. Those institutions which are "insured banks" other than because they have an insured branch in this country, and which are otherwise domestic state-chartered banks are not subject to the provisions of §§ 346.17, 346.18, 346.19 or 346.20. In other words, these institutions are not subject to the indicated provisions relating to the agreement to provide information and to be examined, to the recordkeeping requirements, to the pledge of assets, nor to the asset maintenance rules; however, these institutions are subjects to other statutory and regulatory requirements by virtue of their being domestic insured banks.

A change is proposed at § 346.4(b) to eliminate an outdated grandfather provision which allowed foreign banks establishing State branches before September 17, 1978 to operate those branches as noninsured branches until September 16, 1979 without deposit-taking restrictions. Appendix A to Part 346 is also being eliminated. The initial intent of this appendix was to provide current lists of states which require deposit insurance as a prerequisite to receiving a charter and of states which do not require such deposit insurance. The administrative difficulty of maintaining such lists accurately does not warrant retaining the appendix. State banking departments will, of course, continue to monitor their respective requirements. Section 346.17(a)(1) would specify that information provided must be in English.

Amendments to § 346.7, concerning notification to depositors, are also being proposed. It is proposed that negotiable certificates of deposit of more than \$100,000 no longer be exempted from the requirement of either a statement on a form evidencing a deposit or an acknowledgement by the depositor. Experience has shown that confusion can and does exist in regard to deposits of more than \$100,000. In addition, a depositor of more than \$100,000 generally does expect some FDIC coverage. The provision at current § 346.7(a)(2) that any State branch exempt from the insurance requirement under § 346.6 would, within 30 days from the date of accepting an initial deposit of less than \$100,000, have to notify existing depositors in writing that the branch is not insured by the FDIC is

being eliminated. It is believed that although this provision was important at the time of its adoption, the requirements for display of signs indicating that deposits are not insured and for statements on negotiable certificates of deposit are sufficient to cover any likely risk of confusion to a depositor.

Other technical and stylistic changes, including some clearer statements of what party or parties at the FDIC would normally have authority to act in specific situations, would be made throughout Part 346, as well as in an amendment to § 303.8.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, the Board of Directors hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. There are presently 22 foreign banks which have insured branches, and they are worldwide institutions with assets ranging from approximately \$1 to 240 billion. The requirements of 5 U.S.C. 603 and 604 that initial and final regulatory flexibility analyses be made do not apply to this proposal since this proposed rule would not add an economic burden to small entities.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, banking.

12 CFR Part 346

Bank deposit insurance, Foreign banks, banking, Banks, banking, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FDIC hereby proposes to amend Parts 303 and 346 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for Part 303 reads as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, 1829; 15 U.S.C. 1607.

2. Section 303.8(f) is revised to read as follows:

§ 303.8 Other delegations of authority.

(f) *Agreements for pledge of assets by foreign banks.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to 12 CFR 346.19. This authority shall also extend to the power to approve the use of a specific depository, as well as to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model pledge agreement used for such pledge agreements.

PART 346—FOREIGN BANKS

3. The authority citation for Part 346 reads as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 3103, 3104, 3108.

4. Section 346.1 is amended by revising paragraphs (a) and (p) to read as follows:

§ 346.1 Definitions.

(a) "Foreign bank" means any company organized under the laws of a foreign country, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands or the Virgin Islands which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation, banks organized under the laws of a foreign country, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 346.17, 346.18, 346.19, and 346.20.

(p) "Depository" means any insured state bank, national bank, or insured branch. A depository may not be an affiliate of the foreign bank whose

insured branch is seeking to use the depository.

5. Section 346.4 is amended by removing the paragraph designation (a) and paragraph (b) in its entirety and redesignating "(1)" and "(2)" as "(a)" and "(b)."

6. Section 346.6 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5), and (a)(6) to read as follows:

§ 346.6 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be deemed to be engaged in a domestic retail deposit activity which requires the branch to be an insured branch under § 346.4 if initial deposits in an amount of less than \$100,000 are derived solely from the following:

(1) Any business entity, including any corporation, partnership, sole proprietorship, association, or trust, which engages in commercial activity for profit.

(4) Any draft, check, or similar instrument issued by the branch for the transmission of funds.

(5) Any individual who is not a citizen of the United States but who resides in the United States, *Provided*, That the individual is an employee of:

(i) Any branch, agency, or representative office of a foreign bank;

(ii) Any business entity, including any corporation, partnership, association, or trust, which is organized pursuant to the laws of any foreign country;

(iii) Any foreign government, including any agency of a foreign government; or

(iv) An international organization comprised of members consisting of two or more sovereign nations.

(6) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit.

7. Section 346.7 is revised to read as follows:

§ 346.7 Notification to depositors.

Any State branch is exempt from the insurance requirement pursuant to § 346.6 shall—

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement "This deposit is *not* insured by the FDIC"; or require each depositor to execute a statement which

acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch.

8. The second sentence of § 346.16 is revised to read as follows:

§ 346.16 Scope.

These rules relate to an agreement to provide information and to be examined, recordkeeping, pledge of assets, asset maintenance, and deductions from the assessment base.

9. Section 346.17 is amended by revising the section heading and the third sentence of paragraph (a)(1) to read as follows:

§ 346.17 Agreement to provide information and to be examined.

(a) * * *

(1) * * * Information provided shall be in English and in the form requested by the FDIC and shall be made available in the United States. * * *

10. Section 346.19 is amended by revising paragraphs (b)(1) and the last sentence of (b)(3), (c), (d) introductory text, (d)(3), (d)(5), (d)(7), and (e) and adding paragraph (d)(8) to read as follows:

§ 346.19 Pledge of assets.

(b) *Amount of assets to be pledged.* (1) A foreign bank shall pledge assets equal to five percent of the average of the insured branch's liabilities for the last 30 days of the second and fourth calendar quarters, respectively. This average shall be computed by using the sum of the close of business figures for the 30 calendar days of the second and fourth calendar quarters, respectively, ending with and including the last date of the respective calendar quarter divided by 30.⁵ In determining its average liabilities, the branch may exclude liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank. The value of the pledged assets shall be computed based on the lesser of the principal amount (par value) or market value of such assets at the time of the original pledge and thereafter as of the last date of the second and fourth calendar quarters, respectively.

⁵ The close of business Saturday shall be used for Saturday and Sunday. If the branch is closed on Saturday, the closing figure for Friday shall be used for Friday, Saturday, and Sunday.

(3) * * * Among the factors to be considered in imposing these requirements are the concentration of risk to any one borrower or group of related borrowers, or the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located.

(c) *Depository.* A foreign bank shall place pledged assets for safekeeping at any depository which is located in any state. A foreign bank must obtain the FDIC's prior written approval of the depository selected, and such approval may be revoked and dismissal of the depository required whenever the depository does not fulfill any one of its obligations under the agreement. A foreign bank shall appoint and constitute the depository as its attorney in fact for the sole purpose of transferring title to pledged assets to the FDIC as may be required to effectuate the provisions of § 346.19(a).

(d) *Assets that may be pledged.* Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the kinds of assets listed below; such assets must be denominated in United States dollars. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designees at such time as any such asset is placed with the depository.

(3) Commercial paper that is rated P-1 or P-2, or their equivalent, by a nationally recognized rating service; *Provided*, That any conflict in a rating shall be resolved in favor of the lowest rating.

(5) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; *Provided*, That such obligations have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lowest rating).

(7) Notes issued by bank holding companies or banks organized under the laws of the United States or any state thereof or notes issued by United States branches of foreign banks, *Provided*, That the notes have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lowest rating) and that they

are payable in the United States, and *Provided Further*, That the issuer is not an affiliate of the foreign bank pledging the note.

(8) Any asset determined by the FDIC to be acceptable.

(e) *Pledge agreement.* A foreign bank shall not pledge any assets unless a pledge agreement in form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository. The agreement, in addition to other terms not inconsistent with the paragraph (e), shall give effect to the following terms:

(1) *Original pledge.* The foreign bank shall place with the depository assets of the kind described in § 346.19(d), having an aggregate value in the amount as required pursuant to § 346.19(b).

(2) *Additional assets required to be pledged.* Whenever the foreign bank is required to pledge additional assets for the benefit of the FDIC or its designees pursuant to § 346.19(b)(1), it shall place (within two (2) business days after the last day of the immediately preceding second or fourth calendar quarter, respectively, unless otherwise ordered) additional assets of the kind described in § 346.19(d), having an aggregate value in the amount required by the FDIC.

(3) *Substitution of assets.* The foreign bank, at any time, may substitute any assets for pledged assets, and, upon such substitution, the depository shall promptly release any such assets to the foreign bank. *Provided*, That the foreign bank pledges assets of the kind described in § 346.19(d) having an aggregate value not less than the value of the pledged assets for which they are substituted and certified as such by the foreign bank and the FDIC has not by written notification to the foreign bank, a copy of which shall be provided to the depository, suspended or terminated the foreign bank's right of substitution.

(4) *Delivery of other documents.* Concurrently with the pledge of any assets, the foreign bank shall deliver to the depository all documents and instruments necessary or advisable to effectuate the transfer of title to any such assets and thereafter, from time to time, at the request of the FDIC, deliver to the depository any such additional documents or instruments.

(5) *Acceptance and safekeeping responsibilities of the depository.* (i) The depository shall accept and hold any assets pledged by the foreign bank pursuant to the pledge agreement for safekeeping free and clear of any lien, charge, right of offset, credit, or preference in connection with any claim the depository may assert against the foreign bank and shall designate any such assets as a special pledge for the

benefit of the FDIC or its designees. The depository shall not accept the pledge of any such assets unless concurrently with such pledge the foreign bank delivers to the depository the documents and instruments necessary for the transfer of title thereto as provided in this part.

(ii) The depository shall hold any such assets separate from all other assets of the foreign bank or the depository. Such assets may be held in book-entry form but must at all times be segregated on the records of the depository and clearly identified as assets subject to the pledge agreement.

(6) *Reporting requirements of the branch and the depository—(i) Initial reports.* Upon the original pledge of assets as provided in § 346.19(e)(1), the depository shall provide to the foreign bank and to the regional director of the FDIC region in which the branch is located a written report in the form of a receipt identifying each asset pledged and specifying in reasonable detail with respect to each such asset the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date and call date; and the foreign bank shall provide to the regional director of the FDIC region in which the branch is located a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, and which states that the aggregate value of all such assets is the amount required pursuant to § 346.19(b) and that all such assets are of the kind described in § 346.19(d).

(ii) *Semiannual reports.* Within ten (10) calendar days after the end of the second and fourth calendar quarters: (A) The depository shall provide to the regional director of the FDIC region in which the branch is located a written report specifying in reasonable detail with respect to each asset currently pledged (including any asset pledged to satisfy the requirements of § 346.19(b)(3) and identified as such), as of two business days after the end of each of the specified calendar quarters, the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date, and call date, *Provided*, That if no substitution of any asset has occurred during the reporting period, the report need only specify that no substitution of assets has occurred; and (B) the foreign bank shall provide as of two business days after the end of each of the specified calendar quarters to the regional director of the FDIC region in which the branch is located a written report certified as correct by the foreign bank which sets forth the value

of each pledged asset and the aggregate value of all such assets, which states that the aggregate value of all such assets is the amount required pursuant to § 346.19(b) and that all such assets are of the kind described in § 346.19(d), and which states the average of the liabilities of each branch of the foreign bank computed in the manner and for the period prescribed in § 346.19(b).

(iii) *Additional reports.* The foreign bank shall, from time to time, as may be required, provide to the regional director of the FDIC region in which the branch is located a written report in the form specified containing the information requested with respect to any asset then currently pledged.

(7) *Access to assets.* With respect to any asset pledged pursuant to the pledge agreement, the depository will provide representatives of the FDIC or the foreign bank access (during regular business hours of the depository and at the location where any such asset is held, without other limitation or qualification) to all original instruments, documents, books, and records evidencing or pertaining to any such asset.

(8) *Release upon the order of the FDIC.* The depository shall release to the foreign bank any pledged assets, as specified in a written notification of the regional director of the FDIC region in which the branch is located, upon the terms and conditions provided in such notification, including without limitation the waiver of any requirement that any assets be pledged by the foreign bank in substitution of any released assets.

(9) *Release to the FDIC.* Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821f) to pay insured deposits of an insured branch, the FDIC by written certification shall so inform the depository; and the depository, upon receipt of such certification, shall thereupon promptly release and transfer title to any pledged assets to the FDIC or release such assets to the foreign bank, as specified in the certification. Upon release and transfer of title to all pledged assets as specified in the certification, the depository shall be discharged from any further obligation under the pledge agreement.

(10) *Interest earned on assets.* The foreign bank may retain any interest earned with respect to the assets currently pledged unless the FDIC by written notice prohibits retention of interest by the foreign bank, in which case the notice shall specify the disposition of any such interest.

(11) *Expenses of agreement.* The FDIC shall not be required to pay any fees, costs, or expenses for services provided

by the depository to the foreign bank pursuant to, or in connection with, the pledge agreement.

(12) *Substitution of depository.* The depository may resign, or the foreign bank may discharge the depository, from its duties and obligations under the pledge agreement by giving at least sixty (60) days' written notice thereof to the other party and to the regional director of the FDIC region in which the branch is located. The FDIC, upon thirty (30) days' written notice to the foreign bank and the depository, may require the foreign bank to dismiss the depository if the FDIC in its discretion determines that the depository is in breach of the pledge agreement. The depository shall continue to function as such until the appointment of a successor depository becomes effective, and the depository has released to the successor depository the pledged assets and documents and instruments to effectuate transfer of title in accordance with the written instructions of the foreign bank as approved by the FDIC. The appointment by the foreign bank of a successor depository shall not be effective until the FDIC has approved in writing the successor depository and a pledge agreement in form and substance satisfactory to the FDIC has been executed.

(13) *Waiver of terms.* The FDIC may by written order waive compliance by the foreign bank or the depository with any term or condition of the pledge agreement.

12. Section 346.20 is revised to read as follows:

§ 346.20 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis eligible assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities or, in the case of a newly-established branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices or wholly owned subsidiaries. The Director of the Division of Bank Supervision or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The Board of Directors may require that a higher ratio of eligible assets be maintained if the financial condition of the branch warrants such action. Among the factors which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers, or the concentration

of transfer risk to any one country including the country in which the foreign bank's head office is located. Eligible assets shall be payable in United States dollars or in a currency freely convertible into United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) the branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, other branches, agencies, offices or affiliates;

(2) Any asset designated "Other Transfer Risk Problem" or classified "Substandard," "Doubtful," "Value Impaired," or "Loss" in the most recent state or federal examination report;

(3) Any deposit of the branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination;⁶

(5) Any asset not in the branch's actual possession unless the branch holds title to such asset and the branch maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this

⁶ Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed.

Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the branch, by the regional director of the FDIC region in which the branch is located.

section and shall designate one branch to be responsible for maintaining the records of the branches' compliance with this section.

(d) The average book value of the branch's liabilities for a quarter shall be, at the branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the branch's liabilities for a quarter shall be retained by the branch until the next federal examination.

§ 346.21 [Removed and Reserved]

13. Section 346.21 is removed and reserved.

§ 346.23 [Removed]

14. Section 346.23 is removed.

Appendix A to Part 346—[Removed]

15. Appendix A to Part 346 is removed.

By Order of the Board of Directors.

Dated at Washington, DC, this 7th day of October, 1988.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-23937 Filed 10-19-88; 8:45 am]

BILLING CODE 6174-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-141-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which would require the installation of screws and nuts with two separate locking devices in the forward and aft quadrant cable stops in the rudder control system. This proposal is prompted by reports that the single locking device on the cable stop retention screw and nut in the rudder control system is inadequate in the event of a single failure. A dual locking

system has been shown to be necessary to provide an adequate level of safety. This condition, if not corrected, could lead to loss of control of the airplane while in flight or landing.

DATE: Comments must be received no later than December 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-141-AD, 17900

Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 series airplanes.

It has been determined that an existing single locking device in the cable stop retention screw and nut in the rudder control system, as installed on the Model ATR-42, is not adequate in the event of a single failure. This condition, if not corrected, could lead to loss of control of the airplane while in flight or landing.

Aerospatiale has issued Service Bulletin ATR-42-27-0027, Revision 2, dated June 27, 1988, which describes procedures for the installation of screws and nuts having two separate locking devices in the rudder control system forward and aft quadrant cable stops. DGAC France has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 88-070-011(B), dated May 11, 1988, to address this subject.

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

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of two separate locking devices on the rudder control cables, in accordance with the service bulletin previously mentioned.

It is estimated that 35 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$5,600.

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

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$160). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

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

Aerospatiale: Applies to Model ATR-42 series airplanes, as listed in Aerospatiale Service Bulletin ATR42-27-0027, Revision 2, dated June 27, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of rudder control, accomplish the following:

A. Within 60 days after the effective date of this AD, install screws and nuts having two separate locking devices in the forward and aft quadrant cable stops in the rudder control system, in accordance with Aerospatiale Service Bulletin ATR42-27-0027, Revision 2, dated June 27, 1988.

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

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 88-24249 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-96-AD]

Airworthiness Directives; Boeing Model 757-200 Series Airplanes Equipped With Pratt and Whitney PW2000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757-200 series airplanes equipped with Pratt and Whitney PW200 engines, which would require replacing five tube assemblies in the oil pressure indicating system of each engine with flexible hose assemblies. This proposal is prompted by reports of preload in tube assemblies causing tube or component cracking, with resulting loss of engine oil. This condition, if not corrected, could lead to inflight engine shutdowns and may result in damage to the engine.

DATE: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA,

Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael K. McRae, Propulsion Branch, ANM-140S; telephone (206) 431-1972. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports that, in the engine oil pressure indicating system on certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 engines, the tube, bracket, and other tolerance build-ups can result in preloading of the tube assemblies, which may cause tube or component cracking. The resulting oil loss has resulted in eleven engine inflight shutdowns, with one of these engines sustaining substantial damage.

The FAA has reviewed and approved Boeing Service Bulletin 757-79-0005, dated May 26, 1988, which describes procedures to gain access to and remove

the five tube assemblies involved; replace these tube assemblies with flexible hose assemblies; and perform leak checks and functional tests of the new configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require that the five tube assemblies in the engine oil pressure indicating system be replaced with flexible hose assemblies, in accordance with the service bulletin previously mentioned.

It is estimated that 59 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$34,220.

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

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BOEING: Applies to Model 757-200 series airplanes through line number 164, equipped with Pratt and Whitney PW2000 series engines, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent engine inflight shutdown and engine damage due to loss of engine oil resulting from cracked oil pressure indicator tube assemblies, accomplish the following:

A. Remove five oil pressure indication system tube assemblies and replace them with flexible hose assemblies, in accordance with Boeing Service Bulletin 757-79-0005, dated May 26, 1988.

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

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

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

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

Issued in Seattle, Washington, on October 6, 1988.

Steven B. Wallace,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 88-24250 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-116-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all CASA Model C-212 series airplanes, which would require structural inspections of the mechanical wing flap control system and repair or replacement, as necessary. This proposal is prompted by a structural reevaluation of the entire flap control system, which identified certain significant structural components which need to be inspected for damage, including corrosion and cracking, to assure the continued airworthiness of the flap system. This condition, if not detected and corrected, could lead to corrosion or cracking, which could compromise the structural integrity of the flap system.

DATE: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas S.A. Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Art Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-116-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

The Direccion General de Aviacion Civil (DGAC), which is the airworthiness authority of Spain, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist in the flap control system on CASA Model C-212 series Airplanes.

The manufacturer, CASA, has recently conducted a structural reassessment of the flap system, using engineering evaluation techniques. In order to evaluate the impact of damage, including corrosion and cracking, with respect to maintaining the safe design of the CASA Model C-212 airplane wing flap control system, CASA developed criteria and guidelines for: (a) Selecting the principal structure elements (PSE) which are candidates for supplemental inspection by using the latest engineering analysis techniques; and (b) analyzing existing inspection programs. This is a supplement to the current normal maintenance inspection programs to detect a damaged condition, and provides detailed non-destructive inspection (NDI) procedures to supplement the operator's existing program, as necessary. Fatigue damage, if not detected and corrected, could compromise the structural integrity of the flap system.

The DGAC has approved CASA Document COM. 212-206, Revision 1, dated May 20, 1988, which describes procedures for the Supplemental Structural Inspection (SSI) of the Model C-212 mechanical flap control system.

The DGAC has classified this document as mandatory. The components to be inspected are divided into five PSE's: (1) Center bellcrank, (2) intermediate bellcrank at Station 1530 Left, (3) intermediate bellcrank at Station 1530 right, (4) control rod ends, and (5) inner control rods.

In order to implement the SSI, each operator must compare its current structural maintenance program to the SSI requirements specified in CASA Document COM. 212-206, Revision 1, dated May 20, 1988. If the current inspections equal or exceed the SSI requirements, no additional supplemental inspection program would be required for that area in the wing flap control system. Otherwise, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program.

In developing the SSI, the manufacturer and operators reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SSI program. As a result, the CASA SSI allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

The repetitive inspection interval proposed by this AD action would be more frequent than that called out in the CASA Document COM. 212-206. The repetitive inspection interval recommended by CASA is 20,000 landings and only a portion of the fleet is recommended to be inspected. The FAA has determined that the flap systems on all CASA C-212 series airplanes, being damage-tolerant by design, need to be inspected on a yearly basis to provide an acceptable method of detecting damage of any sort which may adversely affect the required level of safety. Based on the average number of landings per year for the U.S.-registered fleet, the FAA has determined that this inspection must be repeated at least every 4,000 landings to ensure the structural integrity of the CASA C-212 wing flap control system.

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

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require

supplemental structural inspections, and repair or replacement, as necessary, in accordance with the CASA document described above.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately 11 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$26,840. (This supplemental inspection would be repeated every 4,000 landings at this same cost.)

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

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C-212 series airplane are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To ensure continuing structural integrity of the wing flap control system, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that will provide for inspection of the wing flap control system in accordance with CASA Document COM. 212-206, Revision 1, dated May 20, 1988. The non-destructive inspection techniques set forth in the CASA C-212 non-destructive procedures (27-50-01 through 27-50-05) provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, positive or negative, must be reported to CASA Product Support, in accordance with instructions in the CASA Flap Control System Inspection Document. This Supplemental Structural Inspection (SSI) is to be repeated at intervals not to exceed 4,000 landings.

B. Cracked structures or damaged components detected during the inspection required by paragraph A., above, must be replaced prior to further flight, in accordance with CASA Document Com. 212-206, Revision 1, dated May 20, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 6, 1988.

Steven B. Wallace,
*Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.*

[FR Doc. 88-24251 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-144-AD]

**Airworthiness Directives; Fokker
Model F-27 Series Airplanes in Mark
500 Configuration**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which would require a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary. This proposal is prompted by reports of chafing of the electrical wiring due to insufficient clamping of the cableloom and interference between the cableloom and the cable ducting. This condition, if not corrected, could lead to loss of electrical power and could create a potential fire hazard.

DATE: Comments must be received no later than December 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-144-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

**SUPPLEMENTARY INFORMATION:
Comments Invited**

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-144-AD, 17900 Pacific Highway South, C-68966, Washington 98168.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition, which may exist on Fokker Model F-27 series airplanes in Mark 500 configuration.

There have been reports of chafing of the cableloom wiring against the cable ducting, due to insufficient clamping. This condition, if not corrected, could lead to loss of electrical power and could create a potential fire hazard.

Fokker has issued Service Bulletin F27/24-77, dated June 7, 1988, which describes procedures for a one-time inspection for chafing and insufficient clamping of the upper fuselage cableloom, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-40, dated June 7, 1988.

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

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require a one-time inspection of the upper fuselage cableloom for defective wiring, and repair, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$6,720.

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

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed legislation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

Fokker: Applies to Model F-27 series airplanes, Serial Numbers 10623 through 10692, in Mark 500 configuration, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a potential fire hazard due to loss of electrical power, accomplish the following:

A. Within 60 days after the effective date of this AD, perform a one-time inspection of the upper fuselage cableloom for chafing and insufficient clamping, and repair, if necessary, in accordance with Fokker Service Bulletin F27/24-77, dated June 7, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-133, FAA, Northwest Mountain Region.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 88-24254 Filed 10-19-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-137-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes,

which would require relocation of the instrument panel lighting ballast transformers. This proposal is prompted by reports of the transformers overheating due to inadequate ventilation. This condition, if not corrected, could lead to the transformers overheating, causing smoke in the cockpit and creating a potential fire hazard.

DATE: Comments must be received no later than December 15, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-137-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Washington.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-137-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Fokker Model F-28 series airplanes. There have been reports of overheating of the instrument panel lighting transformers due to inadequate ventilation. This condition, if not corrected, could lead to the transformers overheating, causing smoke in the cockpit and creating a potential fire hazard.

Fokker has issued Service Bulletin No. F28/33-34, dated June 1, 1988, which describes procedures for relocation of the ballast transformers from the glareshield and the right hand cockpit sidewall to the left-hand cockpit sidewall where better ventilation will reduce the risk of overheating. The RLD has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-31, dated May 20, 1988.

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

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require relocation of the ballast transformers from the glareshield panel and the right hand cockpit sidewall to the left hand cockpit sidewall, in accordance with the service bulletin previously mentioned.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for parts is \$600. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$76,500.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model F-28 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11231, 11991, and 11992, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a potential fire hazard in the cockpit, accomplish the following:

A. Within 60 days after the effective date of this AD, relocate the instrument lighting ballast transformers from the glareshield panel and the right hand cockpit sidewall to the left-hand cockpit sidewall, in accordance with Fokker Service Bulletin No. F28/33-34, dated June 1, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 11, 1988.

Steven B. Wallace,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 88-24253 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-126-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, which would require inspection of the rudder actuator for internal hydraulic fluid leakage, and replacement, if necessary, to ensure that degraded actuators are removed from service. This proposal is prompted by reports of degraded actuators. This condition, if not corrected, could lead to reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

DATE: Comments must be received no later than December 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention:

Airworthiness Rules Docket No. 88-NM-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Discussion

Operators of McDonnell Douglas Model DC-9/MD-88 series airplanes have reported instances of yaw oscillation in flight. Investigation has revealed the presence of premature piston ring wear and/or failure of the face seals in the rudder power actuator. These conditions cause internal

hydraulic fluid leakage (by-pass) and degradation of rudder authority. The problem has been reported on one airplane with as few as 617 flight hours since overhaul of the rudder actuator. Reduced rudder authority may result in an uncontrollable sideslip should an engine failure occur on takeoff.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, which describes inspection of the rudder actuator for internal leakage at initial and repetitive intervals, based on the rudder hydraulic pressure necessary to maintain adequate flight control on takeoff considering an engine failure.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require initial and repetitive inspections of the rudder actuator for internal leakage in accordance with the service bulletin previously mentioned. The initial inspection for the DC-9-10, -20, and -87 series airplanes is proposed as 500 flight hours. The initial inspection for the DC-9-30, -40, -50, -80, and MD-88 series airplanes is proposed as 1000 flight hours. Repetitive inspections are also proposed to maintain the airplane in an airworthy condition. Rudder actuators which do not meet the internal leakage check must be replaced with ones within internal leakage limits.

The premature high internal leakage appears to be a function of the piston barrel finish/ring seal material and McDonnell Douglas is currently testing design changes to correct this situation. When these design changes are available, the FAA may consider further rulemaking to provide for terminating action for the inspection requirements of this proposed AD.

It is estimated that 870 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. (Replacement of the rudder actuator, if necessary, would require 13 manhours to accomplish). Based on these figures, the total cost of this AD on U.S. operators is estimated to be \$348,000 for the initial required inspection.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with the Executive Order 12612, it is determined that this proposal would not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncontrollable airplane sideslip due to an ineffective rudder actuator, accomplish the following:

A. For Model DC-9-11, -12, -13, -14, -15, -15F, -21, and -87 series airplanes: Within 500 flight hours after the effective date of this airworthiness directive (AD), unless already accomplished within the last 1000 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988.

B. For Model DC-9-31, -32, -32F, -33, -34, -34F, -41, -51, -81, -82, -83, and MD-88 series airplanes: Within 1000 flight hours after the effective date of the AD, unless already accomplished within the last 1500 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage, in accordance with

McDonnell Douglas Alert Service Bulletin, A27-291, Revision 3, dated August 24, 1988.

C. If the rudder internal hydraulic fluid leakage is within the limits established in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, repeat the inspection specified in paragraph A. or B., above, as follows:

1. For those airplanes specified in paragraph A., at interval not to exceed 1500 flight hours.

2. For those airplanes specified in paragraph B., at intervals not to exceed 2500 flight hours.

D. Any rudder actuator which exceeds the internal hydraulic fluid leakage limit in McDonnell Douglas Alert Service Bulletin A27-291, Revision 3, dated August 28, 1988, must be replaced, prior to further flight, with a rudder actuator within those limits.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through a FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on October 6, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24255 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ANE-33]

Airworthiness Directives; Rolls-Royce (R-R) pic RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing Airworthiness Directive (AD) to identify additional low pressure turbine (LPT) stage 2 vane nozzle assemblies, installed on certain R-R RB211 engines, for modification in accordance with the manufacturer's published instructions. The proposal is needed to prevent an uncontained LPT stage 1 disk failure.

DATE: Comments must be received on or before November 22, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 86-ANE-33, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 86-ANE-33".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, Technical Publication Department, P.O. Box 31, Derby DE2 8BJ, England.

A copy of the SB is contained in Rules Docket No. 86-ANE-33, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 86-ANE-33". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987), by identifying additional LPT stage 2 vane nozzle assemblies requiring modification in accordance with the requirements of R-R SB RB211-72-8301, Revision 5, dated May 13, 1988. On October 7, 1987, Amendment 39-5753 was issued requiring modification of certain LPT stage 2 vane nozzle assemblies. The engine manufacturer has identified additional assemblies requiring modification as listed in Revision 5 of the SB. Therefore, a proposal to amend AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987) is being issued to include the additional assemblies.

R-R SB RB211-72-8301, Revision 5, dated May 13, 1988, adds descriptive information to identify the various standards of existing stage 2 vane nozzle assemblies in need of modification. This descriptive information now identifies stage 2 vane nozzle assemblies Part Numbers (P/N) LK59046, LK59816, LK59853, LK59818, LK59038, LK55447, LK55420, LK54278, LK55452, and LK59002, in addition to P/N's LK63392, LK63331, and LK63333, identified in AD 87-23-04. AD 87-23-04 issuance was prompted by an uncontained LPT stage 1 disk rupture in service which was precipitated by an LPT stage 2 vane nozzle assembly failure.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed amendment to the AD would require modification of LPT stage 2 vane nozzle assemblies in accordance with R-R SB RB211-72-8103, Revision 5, dated May 13, 1988.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of

power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves approximately 150 RB211-22B, -524, -524B2, -524B3, and -524C2 engines (domestic fleet) at an approximate total cost of \$675,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using L-1011 and Boeing 747 series aircraft in which the RB211 engines are installed, none of which are believed to be small entities. 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); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) 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 11.85.

§ 39.13 [Amended]

2. By amending § 39.13, AD 87-23-04, Amendment 39-5753 (52 FR 41973; November 2, 1987), by revising it to read as follows:

Rolls-Royce plc: Applies to Rolls-Royce plc (R-R) RB211-22B, -524, -524B, -524B2, -524B3, and -524C2 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbine (LPT) stage 1 disk uncontained failure, accomplish the following:

(a) Modify LPT stage 2 vane nozzle assemblies Part Numbers (P/N) LK63392, LK63331, LK63333, LK59046, LK59816, LK59853, LK59818, LK59038, LK55447, LK55420, LK54278, LK55452, and LK59002, in accordance with the Accomplishment Instructions of R-R Service Bulletin (SB) RB.211-72-8301, Revision 5, dated May 13, 1988, at the next shop visit of the LPT module, but not later than June 30, 1989.

Note.—For the purpose of this AD, an LPT module shop visit is defined as separation of the LPT rotor assembly from the LPT case/vane nozzle assembly as necessitated by (1) its condition, or (2) a requirement for scheduled maintenance.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, may adjust the compliance time specified in this AD.

Should this proposed rule be adopted, the FAA will request the approval of the Office of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on October 5, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 88-24256 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-134-AD]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A series airplanes, which would require installation of water traps and additional insulation pads in the main and standby pilot tubes. This proposal is

prompted by reports of the intrusion of rain water into the pitot system, and the subsequent formation of ice causing a blockage in the pitot line. This condition, if not corrected, could lead to erroneous airspeed readings.

DATE: Comments must be received no later than December 15, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-134-AD 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania, Product Support, S-58188, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules

Docket No. 88-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on SAAB-Scania Model SF-340A series airplanes. There have been reports of the intrusion of rain water into the pitot system, and the subsequent formation of ice causing a blockage in the pitot line. This condition, if not corrected, could lead to erroneous airspeed readings.

SAAB-Scania has issued Service Bulletin SF340-34-056, dated August 1, 1988, which describes procedures for the installation of water traps and additional insulation pads in the main and standby pitot systems. The LFV has classified this service bulletin as mandatory.

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

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require installation of water traps and additional insulation pads in the main and standby pitot systems, in accordance with the service bulletin previously mentioned.

It is estimated that 68 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The cost of required parts is estimated to be \$175 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$22,780.

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

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of

Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$335). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations 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]

Saab-Scania: Applies to Model SF-340A series airplanes, serial numbers -003 through -138, inclusive, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent erroneous airspeed readings due to ice in the pitot system, accomplish the following:

A. Install water traps and insulation pads in the main and standby pitot systems, in accordance with SAAB-Scania Service Bulletin SF340-34-056, dated August 1, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Produce Support, S-58188, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region,

17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 11, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24257 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-143-AD]

Airworthiness Directives; Short Brothers SD3-30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Shorts Model SD3-30 series airplanes, which would require replacement of the nose landing gear pintle pins with new pins. This proposal is prompted by fatigue testing of the nose landing gear pintle pins which revealed that these pintle pins have a limited service life and must be replaced upon accumulation of 30,000 landings. This condition, if not corrected, could lead to collapse of the nose landing gear.

DATES: Comments must be received no later than December 16, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Shorts Model SD3-30 series airplanes. Fatigue testing of the nose landing gear has revealed that the pintle pins have a limited service life and should be replaced by new pins prior to the accumulation of 30,000 landings. This condition, if not corrected, could lead to the collapse of the nose landing gear.

Short Brothers has issued Service Bulletin SD330-32-119, dated February 1988, which describes replacement of the nose landing gear pintle pins, part numbers 18109-3 and 18110-3, with new pins, part numbers 18109-5 and 18110-5; and references Menasco Service Bulletin Number 32-69, dated August 11, 1981, for accomplishment instructions. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation

Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the nose landing gear pintle pins, in accordance with the service bulletin previously mentioned.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for parts is \$780. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$43,000.

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

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$860). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

Short Brothers, PLC: Applies to Model SD3-30 series airplanes, equipped with Menasco nose landing gear, Part No. 18001, having nose landing gear Serial Number 017 through 097, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Prior to the accumulation of 30,000 landings on the nose landing gear pintle pins, or within the next 250 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 30,000 landings, replace the nose landing gear pintle pins, in accordance with Shorts Service Bulletin SD330-32-119, dated February 1988.

Note.—Shorts Service Bulletin SD330-32-119 references Menasco Service Bulletin 32-69, dated August 11, 1981, for instructions for accomplishing the pintle pin replacement.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1988.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88-24258 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71**[Airspace Docket No. 88-AWP-17]****Proposed Revision to Lihue, HI, Control Zone and Transition Area****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.**SUMMARY:** This notice proposes to revise the Lihue, HI, control zone and transition area to provide controlled airspace for aircraft executing published instrument approach procedures to the Lihue Airport.**DATE:** Comments must be received on or before November 25, 1988.**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-17, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their

comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the control zone and transition area at Lihue, HI. This proposal will provide controlled airspace for aircraft executing instrument approach procedures to the Lihue, HI, Airport. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed 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, when promulgated, 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, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) 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; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lihue, HI [Revised]

Within a 5-mile radius of Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.); beginning at lat. 21°54'50" N., long. 159°21'45" W.; thence clockwise to 21°58'25" N., long. 159°15'50" W.; to lat. 21°55'15" N., long. 159°12'20" W.; to lat. 21°51'15" N., long. 159°11'15" W.; to lat. 21°50'45" N., long. 159°22'00" W.; thence to point of beginning.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Lihue, HI [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 21°58'25" N., long. 159°15'50" W.; thence counter clockwise via the 5-mile radius circle of the Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.); to 22°03'10" N., long. 159°18'20" W.; to lat. 22°05'50" N., long. 159°15'30" W.; thence clockwise via the 10-mile radius circle to lat. 21°55'15" N., long. 159°12'20" W.; to point of beginning.

Issued in Los Angeles, California, on October 3, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-24259 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Part 1700****Poison Prevention Packaging Requirements; Proposed Exemption of Certain Unflavored Aspirin Powders****AGENCY:** Consumer Product Safety Commission.**ACTION:** Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to increase from 13 grains to 15.4 grains the permissible amount of aspirin per unit dose of unflavored aspirin powders allowed to be marketed in packages that are not child-resistant. Except for this exemption, child-resistant packaging would be required. This drug is proposed to be exempted because children are unlikely to ingest a toxic amount of the drug due to the unflavored powder form of the drug and due to a lack of adverse effects associated with the unflavored aspirin products that are presently exempted.

DATES: Comments on the proposal should be submitted not later than December 19, 1988.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:**A. Background**

Among other substances, aspirin is subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471-1476. 16 CFR 1700.14(a)(10). Unflavored aspirin-containing drugs in powder form (other than those intended for pediatric use) are exempt from this requirement when packaged in unit doses containing not more than 13 grains of aspirin per unit dose. 16 CFR 1700.14(a)(1)(ii). This exemption was issued by the Commission in 1978 based on the low incidence of accidental ingestions of

powdered aspirin by young children and on studies which indicate that young children are not likely to consume a toxic amount of the product. 43 FR 17330 (April 21, 1978). The Food and Drug Administration (FDA) has previously exempted powders containing 10 grains or less of aspirin in 1972 (37 FR 2864), based on the same findings.

By letter dated May 20, 1987, Block Drug Company, Inc., petitioned the Commission to amend the exemption for powdered aspirin to increase the permissible amount of aspirin per unit dose of the powdered product from 13 grains to 15.4 grains (15.4 grains = 1 gram). As justification for the exemption, the petitioner provided test data showing that the requested increase in aspirin content is not significant toxicologically and, therefore, does not present an increased risk to young children. The petitioner provided human experience data showing that young children are unlikely to ingest a sufficient quantity of aspirin powders to cause serious adverse effects. The petitioner also noted that its particular product is an adult-oriented product and is usually purchased for immediate consumption at the place of purchase, rather than for household storage and possible access by children.

B. Toxicity Data

While the mean lethal dose of aspirin is 20-30 grams in adults, toxic effects may occur when 10 or more grams are ingested over a period of 12-24 hours. Toxic symptoms include emesis, tinnitus (ringing in the ear), headache, hyperpnea (abnormally deep and rapid breathing), confusion or mania, and general convulsions. Death is usually due to respiratory failure or cardiovascular collapse.

The petitioner conducted acute oral toxicity tests in rats, which showed that the requested increase in aspirin content does not measurably increase the toxicity of the powder. The Commission's Directorate for Health Sciences concludes that the increase in aspirin content will not increase the likelihood of ingestion of a toxic dose. This is because the increase in aspirin is not toxicologically significant, the physical nature of the preparation still makes handling difficult, and the bitter taste will continue to deter children.

C. Injury Data

Human experience data show few cases of accidental ingestion of powdered aspirin drugs by young children and no serious symptoms associated with those ingestions. Data from the Food and Drug Administration's National

Clearinghouse for Poison Control Centers for 1978 to 1984 show 20 reported ingestions of aspirin-containing analgesic powders by children under age five. There were no reported symptoms or hospital visits.

The Commission's Children and Poisoning (CAP) data base, for the period 1978 to September 1987, shows only one powdered aspirin ingestion by a child under age five treated in a hospital emergency room. The child was treated and released.

Neither the petitioner's adverse drug report files nor review of the literature by the Directorate for Health Sciences revealed any reports of toxic ingestions of powdered aspirin products by children under age five.

The petitioner believes that this safety record for unflavored aspirin powders is due to children's inability or unwillingness to consume toxic amounts of the drug, even if they gain access to it. The petitioner cited studies conducted with young children using unit-dose packets of unflavored aspirin powders. Results of the studies showed that the children were able to open one or more packets but, having done so, were unable to transport the powder to their mouths without spilling it. They were unable to pick up the powder with their fingers because of its texture; therefore, when directed to do so, the children tasted the powder by inserting their fingers in it and licking their fingers, or by licking it directly from the table. Having once experienced the unpleasant taste, however, the majority of the children refused to open more than one or two units of the products.

D. Action On The Petition

Human experience data show an absence of adverse effects associated with accidental ingestions of unflavored aspirin powders, and studies indicate that young children are not likely to consume a toxic amount of these products. The usage pattern of aspirin powders may provide an additional deterrent to accidental ingestion by young children. The petitioner reports that unit-dose packages of aspirin powders are primarily purchased for immediate consumption by adults at or near the place of purchase (e.g., restaurants, gas stations, newsstands), rather than for household storage and possible access by young children.

After considering the available information, the Commission preliminarily concludes that the degree and nature of the hazard to children presented by the availability of the unflavored aspirin powders that are the subject of this petition are such that

special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(1) to increase the exemption from requirements for child-resistant packaging for unflavored aspirin powders (other than those intended by pediatric use) that are packaged in unit doses from 13 grains of aspirin per unit dose to 15.4 grains of aspirin per unit dose.

E. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulation's governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption proposed below. For this reason, the Commission concludes that neither an environmental assessment

nor an environmental impact statement is required in this proceeding.

G. Effective Date

Since the rule proposed below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the Federal Register.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14(a)(1)(ii) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(1) * * *

(ii) Unflavored aspirin-containing preparations in powder form (other than those intended for pediatric use) that are packaged in unit doses providing not more than 15.4 grains of aspirin per unit dose and that contain no other substance subject to the provisions of this section.

* * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24240 Filed 10-19-88; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Effervescent Acetaminophen Preparations

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to increase the exemption from child-resistant packaging requirements for effervescent

acetaminophen preparations from products containing 10 percent acetaminophen to products containing no more than 15 percent acetaminophen. Except for this regulation, child-resistant packaging would be required. This drug is proposed to be exempted because the effervescent property effectively deters young children from ingesting a harmful amount of the drug.

DATE: Comments on the proposal should be submitted not later than December 19, 1988.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, acetaminophen is subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471-1476. 16 CFR 1700.14(a)(16). Under the PPPA, all human oral drugs containing more than one gram of acetaminophen are required to be packaged in child-resistant packaging. 16 CFR 1700.14(a)(16). Effervescent¹ tablets or granules are exempt from this requirement if:

1. The dry tablet or granules contain less than 10 percent acetaminophen;
2. The tablet or granules have an oral LD-50 (mean lethal dose) of greater than five grams per kilogram; and
3. The measured dosage of the product, when placed in water, releases at least 85 milliliters of carbon dioxide per grain of acetaminophen in the dry form.

16 CFR 1700.14(a)(16)(i).

This exemption was issued by the Commission in 1981 based on information showing that the

¹ Effervescent preparations are characterized by the rapid release of carbon dioxide in the presence of moisture.

effervescent property of the product effectively deters young children from ingesting significant amounts and on the absence of reports of serious injury or serious illness due to ingestion of effervescent drugs by young children. 46 FR 13501 (February 23, 1981). The Commission has also exempted effervescent forms of aspirin products and potassium supplements based on these same considerations. 16 CFR 1700.14(a)(1)(i), 1700.14(a)(10)(vi).

In a letter dated April 12, 1987, Miles Laboratories, Inc. petitioned the Commission to amend the exemption for effervescent acetaminophen products to:

1. Increase the permissible amounts of acetaminophen in the dry tablet or granules from less than 10 percent to 15 percent.

2. Lower the permissible LD 50 of the product in rats from "greater than five grams per kilogram" to "five grams or greater per kilogram", and

3. Delete the requirement for specification of a minimum level of carbon dioxide release.

The petitioner submitted experimental data and human experience data to support granting the exemption. The petitioner also cited the exemption granted by the Commission in December, 1986, (51 FR 45311) for effervescent aspirin products. The petitioner stated that the requested exemption for effervescent acetaminophen products is identical to the exemption for effervescent aspirin products and is supported by similar data.

All of the exemptions for effervescent products are based on the finding that effervescent preparations have not been involved in serious injury or serious illness in young children and that they have not been involved in a large number of accidental childhood ingestions. In granting the exemptions, the Commission determined that the low incidence of ingestions and the absence of serious symptoms was due to the effervescent property of these drugs, which effectively deters young children from ingesting harmful amounts.

Effervescent products are designed to be ingested only after being dissolved in water. The chemical reaction between the product and water produces the carbon dioxide characteristic of effervescent products. Being hygroscopic (attracting water), the dry product, if placed directly in the mouth, will immediately react with saliva producing a tingling sensation and a foaming action which tends to cause gagging.

Because effervescent analgesic tablets are large, a child would have to chew the tablets in order to swallow them. The chewing action would increase the

effervescent reaction and unpleasant sensation in the child's mouth. Any particles swallowed would produce carbon dioxide in the stomach causing repeated belching, and this would discourage further attempts at ingestion.

A child would be unlikely to ingest a large number of tablets dissolved in water because of the time and the large quantity of water necessary to dissolve the tablets. It would not be chemically or physically possible to dissolve a large number of tablets in a small amount of water, and ingestion of an excessive amount of a concentrated solution of effervescent tablets would result in nausea and vomiting due to the salinity of the solution. In addition, taste studies submitted in support of the 1979 exemption for effervescent potassium supplements confirmed that children under age five were unwilling to consume significant amounts of effervescent preparations.

The petitioner states that all of these factors apply to the new exemption in that the acetaminophen content is not likely to create an increased risk to young children accidentally exposed to the product.

B. Toxicity Data

Each of Miles Laboratories' tablets will contain 0.5 gram, or 13.9 percent, acetaminophen. The Commission's Directorate for Health Sciences reports that a single oral toxic dose of acetaminophen in an adult is approximately 10 grams, with fatalities rare below a single ingestion of 15 grams. Additionally, adults appear to be more susceptible than children to the toxic effects of acetaminophen. In one large study, children under age five had the mildest clinical course of intoxication of any group after known or suspected acute ingestion of 7.5 grams or more of acetaminophen. In a separate report, however, a three-and-a-half year-old child died after being administered five grams in divided doses over a 24-hour period. Additional details of this death were not reported.

Initial toxic symptoms of acetaminophen ingestion include nausea, malaise, and profuse perspiration. These symptoms usually appear shortly after ingestion and may abate 12 to 24 hours later. Two to six days may pass before clinical evidence of injury appears in severely poisoned patients. Death is usually due to liver failure. Human experience data indicate, however, that effervescent acetaminophen preparations have not been involved in serious injury or serious illness in young children.

The petitioner conducted comparative acute oral toxicity tests in rats, which

indicated that effervescent acetaminophen preparations are less toxic than pure acetaminophen. Studies in dogs showed that the median emetic dose for effervescent acetaminophen products is low, indicating that emesis would occur before a toxic dose was ingested. No emesis was observed when dogs were given a toxic dose of pure acetaminophen. Taste tests have shown that young children were unwilling to ingest dangerous amounts of effervescent preparations.

C. Injury Data

Injury data from all available sources confirm the claim that effervescent products are infrequently involved in accidental childhood ingestions. Data from the National Clearinghouse for Poison Control Centers for the years 1978 through 1984 show only one reported ingestion of an effervescent acetaminophen product by a child under age five. This case was without symptoms. The Commission's Children and Poisoning data base shows two ingestions of effervescent acetaminophen products for the period of 1978 through June 5, 1987. But, in both cases, the individuals were treated and released. There have been no reported hospitalizations or deaths. Ingestions by young children involving other effervescent analgesic products have been similarly low and without serious consequences. Literature reviews also revealed no evidence of toxic effects from ingestion of effervescent products by children under age five.

D. Action On The Petition

The available information concerning the absence of significant numbers of ingestions of effervescent drugs by young children, the absence of serious adverse effects in young children who are exposed to these drugs, and the results of taste studies conducted on young children with these drugs indicate that the nature of effervescent formulations effectively deters young children from ingesting toxic amounts.

Accordingly, the Commission preliminarily concludes that the degree and nature of the hazard to children presented by the availability of the effervescent acetaminophen products that are the subject of this petition are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(16) to (1) increase the

exemption for effervescent acetaminophen tablets or granules from such products containing less than ten percent acetaminophen to less than 15 percent, (2) lower the permissible LD-50 of the product in rats from "greater than 5 grams per kilogram" to "five grams or greater per kilogram," and (3) delete the requirement for a particular minimum level of carbon dioxide release.

E. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purposes of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

F. Environmental Considerations

The Commission's regulations governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the exemption proposed below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

G. Effective Date

Since the rule proposed below provides for an exemption, the provision

of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the Federal Register.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission amends Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14(a)(16)(i) is revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(16) * * *

(i) Effervescent tablets or granules containing acetaminophen, provided the dry tablet or granules contain less than 15 percent acetaminophen, the tablet or granules have an oral LD-50 of 5 grams or greater per kilogram of body weight, and the tablet or granules contain no other substance subject to this § 1700.14(a).

* * * * *

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24238 Filed 10-19-88; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Certain Medroxyprogesterone Acetate Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to allow medroxyprogesterone acetate (MPA) tablets to be marketed in mnemonic packages¹ that are not child-resistant, if

the package contains no more than 100 milligrams of the drug. Child-resistant packaging currently is required because these substances are oral prescription drugs. This drug is proposed to be exempted because of its low toxicity. The drug is used for the treatment of female hormonal imbalance disorders.

DATE: Comments on the proposal should be submitted not later than December 19, 1988.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, oral prescription drugs intended for human use are subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471-1476, 16 CFR 1700.14(a)(10). By letter dated April 27, 1987, Ayerst Laboratories petitioned the Commission to exempt from special packaging requirements its medroxyprogesterone acetate ("MPA") tablets in mnemonic packages containing no more than 100 milligrams (mg) of the drug. MPA, a progestin, is a prescription hormonal drug used for the treatment of a variety of female hormonal imbalance disorders.

As justification for the exemption, the petitioner submitted evidence of the low oral toxicity of progestins and data showing the absence of acute toxicity from ingestion of progestins by young children. The petitioner also cited data that the Commission used as the basis for previous exemptions of other progestin compounds.

B. Human Experience and Toxicity Data

Data from the Food and Drug Administration ("FDA") National

¹ A mnemonic package is any package designed for the administration of one dosage unit at a time and incorporating any feature which serves to

remind the user to take the dosage at specified intervals throughout the period during which the medication is to be administered.

Clearinghouse for Poison Control Centers for the years 1978-1984 show a total of 78 reported ingestions of MPA by children under age five. Three of the cases reported symptoms; one case resulted in a hospital visit with no reported symptoms.

For the period of 1978 through August 1987, the Commission's CAP (Children and Poisoning) data base shows five cases of MPA ingestions by children under five treated in hospital emergency rooms. All were treated and released.

A literature review and a review of FDA Adverse Drug Reaction Reports revealed no reports of death or serious injury to children under age five following acute ingestion of MPA.

Each MPA tablet will contain 10 mg of the drug. Information on the median lethal dosage (LD-50) of MPA, as well as other progestins, is scant because of the extremely low toxicity of these compounds. Reported acute oral toxicity tests conducted in rats with MPA resulted in no deaths or toxic symptoms even with doses of MPA as high as 10,000 mg/kilogram.

The petitioner states that if a child weighing 10 kilograms (kg) ingested an entire package containing 100 mg of MPA, the amount ingested would be less than the daily dose ingested during long-term therapeutic use. The petitioner states that it is highly unlikely that a one-time ingestion of 100 mg of MPA would be toxic in a child if a therapeutic dose of 800-1200 mg given daily for up to nine months is nontoxic in adults.

The Commission's Directorate for Health Sciences, based on a review of available human and animal data, concludes that progestins demonstrate a low order of acute toxicity. Accidental ingestion would, therefore, pose a minimal threat of illness or injury. This threat would be reduced further because of the type of packaging used, which requires each dose to be opened individually (see discussion below).

Long-term therapeutic administration of progestin compounds has been shown to lead to an increased risk of various blood-clotting disorders in women. These compounds can also damage the fetus. There is, however, no evidence that such effects would be expected from a single ingestion by a child.

The MPA tablets proposed to be exempted will be marketed in mnemonic, blister-type packaging. Oral progestins, including MPA, have been available for the past 40 years and are prescribed and sold predominantly in non-mnemonic packaging. A small percentage of progestins are sold in mnemonic packaging, which is popular with physicians and patients alike and

is available in both child-resistant and non-child-resistant forms.

The low toxicity of hormonal drugs is well established. In 1984, the Commission exempted estrogen and progestin oral contraceptives from special packaging requirements (49 FR 44455). The Commission concluded that the extensive human experience data available at that time provided no evidence of either acute or chronic health effects associated with accidental ingestion of oral contraceptives. In spite of the high frequency of ingestion of oral contraceptives, the frequency of either acute or long-term injury was one of the lowest for any class of drugs.

The FDA concluded that estrogens and progestins could probably be classified as akin to nontoxic because it would be virtually impossible for a child to ingest an amount approaching what might be considered a lethal dose. These data suggest that the frequency of acute injury from accidental ingestion of these hormones will remain low. Based on these same considerations, the Commission granted exemptions for norethindrone acetate tablets (a progestin) and conjugated estrogens tablets in 1984. 49 FR 50386 (December 28, 1984).

Based on a review of available human and animal data, the Commission preliminarily concludes that progestins have a low order of acute toxicity. Accidental ingestion by children would, therefore, pose a minimal threat of illness or injury. This will be even further reduced because of the type of packaging used, which requires each dose to be opened individually. The Center for Drugs and Biologics of the Food and Drug Administration also has "no objection to exempting mnemonic packaging containing no more than 100 mg MPA (10-10 mg tablets) from child resistant packaging."

C. Action On The Petition

After considering the available information, the Commission preliminarily concluded that the degree and nature of the hazard to children presented by the availability of the medroxyprogesterone acetate tablets that are the subject of this petition are such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(10) to exempt medroxyprogesterone acetate tablets from requirements for child-resistant packaging, when dispensed in

mnemonic packages containing not more than 100 mg of the drug.

D. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small business and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact of a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. The difference in cost between child-resistant packaging and packaging permitted by the exemption is not believed to be significant. Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

E. Environmental Considerations

The Commission's regulations governing environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the proposed issued below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

F. Effective Date

Since the rule issued below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the Federal Register.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission proposes to amend Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. A new § 1700.14(a)(1)(ix) is added to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) * * * (ix) Medroxyprogesterone acetate tablets, when dispensed in mnemonic packages containing not more than 100 milligrams of the drug.

Dated: October 14, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-24239 Filed 10-19-88; 8:45 am]

BILLING CODE 63550-01-M

SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 240**

[Release No. 34-26181; File No. S7-21-88]

Proposal to Rescind Rule Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposal to rescind rule.

SUMMARY: The Commission is proposing to rescind Rule 3a12-2 under the Securities Exchange Act of 1934 ("Act"). The Rule exempts a security from the operation of those provisions of the Act which by their terms do not apply to an "exempted security" if a state or political subdivision thereof is obliged to make good to the issuer of such security any deficiency in the income of such issuer, to the extent necessary to pay to the holders of such security interest or dividends at a specified rate, and the business of such issuer is managed by such state or political subdivision. The Commission believes that the Rule, adopted for the benefit of the Boston Elevated Railway Company ("BERC"), is

no longer necessary. The Commission is, therefore, proposing to rescind the Rule and to provide a 30-day comment period to ascertain whether its assumption, that no other issuer is relying on Rule 3a12-2, is correct.

DATE: Comments should be submitted on or before November 21, 1988.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Stop 6-9, Washington, DC 20549, and should refer to File No. S7-21-88. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Edward L. Pittman, Esq., Special Counsel, (202) 727-7492, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced that it proposes to rescind Rule 3a12-2 (17 CFR 240.3a12-2) under the Act.¹ The Commission adopted Rule 3a12-2 on June 16, 1935.² The Rule exempts a security from the operation of those provisions of the Act which by their terms do not apply to an "exempted security" if a state or political subdivision thereof is obliged to make good to the issuer of such security any deficiency in the income of such issuer, to the extent necessary to pay to the holders of such security interest or dividends at a specified rate, and the business of such issuer is managed by such state or political subdivision or by a board or officers appointed by such state or political subdivision. Although the Rule was drafted in general terms, it appears that it was intended to apply to the BERC. The BERC's five dollar annual dividend was guaranteed by the Commonwealth of Massachusetts until 1959 and the company was managed by trustees appointed by the Commonwealth. Rule 3a12-2 permitted trading in the securities of the BERC to continue on the Boston Stock Exchange without registration under the Act.³

¹ 15 U.S.C. 78 et seq.

² 17 CFR 240.3a12-2. See Securities Exchange Act Release No. 279 [June 16, 1935].

³ Section 12(a) of the Act provides that it is "unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title, and the rules and regulations thereunder."

Under the terms of a 1947 Massachusetts statute, however,⁴ the Metropolitan Transit Authority assumed the outstanding indebtedness and liabilities of the BERC and acquired all of its common stock. The BERC subsequently began a process of dissolution and paid a partial liquidating dividend to stockholders of record as of September 12, 1947. At that time, litigation was pending to determine the liability of the company for the payment of income and excess profit taxes to the federal government and it was expected that the dissolution of the corporation would require some time. For these reasons, the Commission considered it appropriate in the public interest and for the protection of investors to permit the market that had long existed on the Boston Stock Exchange for the common stock of the BERC to continue.⁵ At that time, the BERC was the only company with a security that came within the exemptive provisions of Rule 3a12-2. The BERC common stock ceased trading on the Boston Stock Exchange on September 25, 1953.

In response to the Division's request for information, Joseph H. Elcock, General Counsel, Massachusetts Bay Transportation Authority, advised the Division that all bonds, notes and other evidences of indebtedness issued by the BERC had been retired, refunded or otherwise discharged.⁶ Mr. Elcock also expressed the opinion that the Commission's rule providing an exemption for the BERC securities was no longer needed.

In light of the foregoing, the Commission believes that Rule 3a12-2, adopted for the benefit of the BERC, is no longer necessary. The Commission, therefore, proposes to rescind the Rule and to provide a 30-day comment period to ascertain whether its assumption, that no other issuer is relying on Rule 3a12-2, is correct.

Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 stat. 901, as amended (15 U.S.C. 78w).

§ 240.3a12-2 [Removed]

2. By removing § 240.3a12-2.

⁴ See sections 5 and 6 of Chapter 544 of the Commonwealth of Massachusetts Act of 1947.

⁵ Securities Exchange Act Release No. 4077 (April 8, 1948).

⁶ See letter from Joseph H. Elcock to Steve Holtzman dated June 27, 1980.

By the Commission.

Dated: October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rescission of Rule 3a12-2 set forth in Securities Exchange Act Release No. 26181, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that Rule was adopted solely for the benefit of the Boston Elevated Railway Company ("BERC") and that the BERC no longer uses the Rule to obtain an exemption from provisions of the Securities Exchange Act of 1934. The Commission does not believe that any other entities are relying on this Rule and therefore believes that the rescission of the Rule will not have a significant impact on any small entities.

David S. Ruder,
Chairman.

Dated: October 14, 1988.

[FR Doc. 88-24223 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-26180]

Rescission of Rules Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Rescission of rules; conforming amendment.

SUMMARY: The Commission today is rescinding seven obsolete rules. The first is Rule 7c2-1 under the Securities Exchange Act of 1934 ("Act"), which provides an exemption from the provisions of section 7(c)(2) for certain securities exempt from registration under section 12(a) of the Act or traded on exchanges exempt from registration under section 5 of the Act. The second rule is Rule 15a-3 under the Act, which exempts from broker-dealer registration exchange specialists executing block trades. The third rule is Rule 15b7-1 under the Act, which provides that the Commission not name a securities salesperson as a party to an administrative proceeding without first obtaining the salesperson's consent. The fourth rule is Rule 15A/2-1 under the Act, a cross-reference rule which provides for the application procedures outlined in Rule 15b7-1 to administrative proceedings concerning the suspension

or expulsion of a broker-dealer from membership in a registered national securities association. The fifth rule is Rule 15c2-3, which prohibits broker-dealers from trading in certain German securities. The sixth rule is Rule 19a3-1, a cross-reference rule to Rule 15b7-1. The seventh rule is Rule 19b-3, which prohibits national securities exchanges from promulgating rules which fix commissions. These rules have become unnecessary due to action by the courts, Congress, and the passage of time. Consistent with investor protection, the Commission is rescinding the rules as part of its ongoing effort to update regulation and eliminate obsolete rules. Finally, the Commission is making a conforming amendment to Rule 12a-5 of the Act to reflect the rescission of Rule 7c2-1.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT:

Adrian Colachis, Esq., 202/272-2415, Division of Market Regulation, Room 5023, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Rule 7c2-1 under the Act is being rescinded. At the time Rule 7c2-1 was adopted,¹ and during subsequent amendments,² section 7(c)(2) prohibited a broker-dealer from extending credit to a customer without collateral, or on any collateral other than exempted securities or securities registered upon a national securities exchange. The rule originally was intended to provide a temporary exemption from the provisions of section 7(c)(2) of the Act so that securities traded on national securities exchanges that were exempt from registration under section 5 of the Act could be used as collateral to the same extent as those traded on registered exchanges. The rule was later modified to provide a similar exemption for securities that were either listed on national securities exchanges or had unlisted trading privileges, but were not subject to the registration requirements in section 12(a) of the Act.

In 1968, section 7(c)(2) was amended, eliminating the requirement that securities be exempted securities or registered on a national securities exchange in order to be used as collateral by broker-dealers in credit transactions.³ As a result of the 1968

Amendments, the Commission has determined that Rule 7c2-1 has become obsolete. Accordingly, the Commission is rescinding the rule. At the same time, the Commission is also amending Rule 12a-5 of the Act to reflect the rescission of Rule 7c2-1.

The Commission is rescinding Rule 15a-3 under the Act. This rule, adopted in 1958⁴ and never amended, exempts exchange specialists executing block trades off the floor of the exchange from the broker-dealer registration requirements of section 15(a) of the Act. At that time, exchange specialists trading exclusively on an exchange were not required by section 15(a) to register as broker-dealers; Rule 15a-3 extended this broker-dealer registration exemption to block trades executed off the exchange.

The Securities Act Amendments of 1975 ("1975 Amendments"), amending section 15(a), required all exchange specialists to register as broker-dealers.⁵ Because exchange specialists now are registered as broker-dealers, Rule 15a-3's exemption from broker-dealer registration is no longer necessary. Therefore, the Commission is rescinding Rule 15a-3.

Rule 15b7-1, "Proceedings under section 15(b), 15A(l)(2) and 19(a)(3) of the Act," Rule 15A/2-1, "Proceedings Under section 15A(l)(2) of the Act" and Rule 19a3-1, "Proceedings under section 19(a)(3) of the Act," were adopted⁶ to codify the procedures implemented by the Commission following the decision of the U.S. court of appeals in *Wallach v. SEC*.⁷ In *Wallach*, the court held that the Commission could not name a securities salesperson as a party to an administrative proceeding against a broker-dealer under section 15(b) of the Act without the salesperson's consent. Rule 15b7-1⁸ established the procedures to be followed by the Commission in such cases, and delineated the Commission's statutory authority pursuant to sections 15(b), 15A(l)(2), 19(a)(3) and 15A(b)(4) regarding administrative proceedings. Rule 15A/2-1 was adopted as a cross-reference rule to Rule 15b7-1 and was intended to apply to administrative proceedings where a broker-dealer was

¹ Securities Exchange Act Release No. 5790 (October 10, 1958), 23 FR 8097.

² See S. Rep. No. 75, 94th Cong., 1st Sess. 109 (1975).

³ Securities Exchange Act Release No. 5225 (September 9, 1955), 20 FR 7036.

⁴ 202 F.2d 462 (D.C. Cir. 1955).

⁵ Rule 15b7-1 originally was designated Rule X-15B-9. Rule 15A/2-1 originally was designated Rule X-15A/2-1. Securities Exchange Act Release No. 7700 (September 10, 1965), 30 FR 11851.

¹ See Securities Exchange Act Release No. 11 (September 28, 1934).

² See Securities Exchange Act Release Nos. 432 (December 1935); 808 (September 28, 1936); and 1887 (September 10, 1938).

³ Pub. L. No. 90-437, 82 Stat. 452 (1968).

suspended or expelled from membership in a national securities association under section 15A(l)(2). Rule 19a3-1 also was adopted as a cross-reference rule to Rule 15b7-1, and was intended to apply to proceedings under section 19(a)(3), which were governed by the provisions of Rule 15b7-1.

Congress amended the Act in 1964 ("1964 Amendments"). Section 15A(l) was amended at that time to enable the Commission to bar, censure or suspend (for a period not exceeding 12 months) a person from being associated with a member of a registered securities association on the same grounds that a member of the association could have been suspended or expelled by the Commission. The 1964 Amendments also limited the application of the *Wallach* case. Accordingly, the Commission amended Rule 15b7-1 to limit its application to proceedings commenced before the enactment of the 1964 Amendments. No further proceedings have been instituted under Rule 15b7-1. Rule 15b7-1 has been rendered obsolete by its reference to section 15A(l)(2), which was repealed by the 1975 Amendments.⁹

The companion Rules, 15A/2-1 and 19a3-1 were not rescinded at that time. Proceedings are no longer conducted pursuant to section 15A(l)(2). Proceedings under Rule 19a3-1 are governed by the obsolete provisions of Rule 15b7-1.

Accordingly, the Commission has decided to rescind Rules 15b7-1, 15A/2-1, and 19a3-1 because it finds that the rules are no longer necessary.¹⁰

In addition, the Commission has decided to rescind Rule 19b-3 of the Act. Rule 19b-3 prohibits any national securities exchange from adopting or retaining any rule that requires its members or any of their associated persons to charge a fixed commission for transactions effected on or by use of the facilities of the exchange. The Commission has determined that the activities proscribed by Rule 19b-3 are prohibited to the same extent by section 6 of the Act. Accordingly, the Commission is rescinding Rule 19b-3 as unnecessary.

The Commission also is rescinding Rule 15c2-3. Rule 15c2-3 was adopted in 1954 in response to concerns that certain German bearer bonds, looted by the Soviet Army at the conclusion of World War II, might be sold or purchased

through broker-dealers.¹¹ Under the provisions of a Treaty between the Federal Republic of Germany and the United States, no German dollar bonds subject to the validation laws of the Federal Republic of Germany are enforceable against the issuer unless they have been validated. The rule prohibits broker-dealers from inducing the purchase or sale of these securities unless they have been validated under any applicable validation law of the Federal Republic of Germany.

Since the rule was adopted in 1954, the Validation Board for German Dollar Bonds established in this country to review requests for validation has ceased operating. Moreover, most, if not all of the bonds have long since matured. Although the bonds occasionally may be traded or produced for redemption, the Commission has concluded that the market for these instruments has diminished substantially since the rule was adopted. Accordingly, the Commission no longer believes that Rule 15c2-3 is necessary to guard against the sale of unvalidated German dollar bonds by broker-dealers. Any broker-dealers that induce the sale or purchase of these instruments in the future, however, are reminded that they continue to be subject to the general antifraud provisions of the federal securities laws.¹²

In accordance with section 4(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), the Commission finds that notice and opportunity for public comment are unnecessary because the rules being rescinded are obsolete. Consequently, the rescission of the rules and the conforming amendment to Rule 12a-5, will not impair the protection of investors. Pursuant to section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(9), the Commission may make the rescission and the conforming amendment effective immediately because the rescission affects unnecessary rules.

List of Subjects in 17 CFR Part 240

Brokers, confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

¹¹ See Securities Exchange Act Release Nos. 4983 (January 11, 1954), 5011 (March 9, 1954), and 5370 (September 24, 1956).

¹² See, e.g., *In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.*, Securities Exchange Act Release No. 14149 (November 9, 1977) (stating that "[w]hen a broker-dealer recommends a security to its customer it represents that it has conducted a reasonable investigation of that security and that there exists a reasonable basis for the recommendation.")

Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 7(c), 12(a), 15(a), 15(b), 15(c), 15A, 19(a), 19(b) and 23 thereof, 15 U.S.C. 78f, 78o(a), 78o(b), 78o(c), 78o-3, 78s, and 78w, the Commission is amending Chapter II of Title 17 by removing § 240.7c2-1, § 340.15a-3, § 240.15b7-1, § 240.15c2-3, § 240.15A12-1, § 240.19a3-1 and § 240.19b-3; and amending § 240.12a-5 in the manner set forth below.

Text of Final Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

§§ 240.7c2-1, 240.15a-3, 240.15b7-1, 240.15c2-3, 240.15A12-1, 240.19a3-1, and 240.19b-3 [Removed]

2. By removing §§ 240.7c2-1, 240.15a-3, 240.15b7-1, 240.15c2-3, 240.15A12-1, 240.19a3-1 and 240.19b-3.

§ 240.12a-5 [Amended]

3. By amending § 240.12a-5 by removing the reference to § 240.7c2-1 in paragraph (e).

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24230 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-26182, File Nos. S7-325, S7-510, and S7-665]

Withdrawal of Proposed Rules Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Commission today is withdrawing three proposed rules under the Securities Exchange Act of 1934. Proposed Rule 10b-11 would prohibit any person from effecting a short sale of any equity security for his own account or the account of another unless he has borrowed the security, or has a reasonable belief he will be capable of delivering the security on the date delivery is due. Proposed Rule 10b-12 would preclude an issuer from

⁹ Public Law No. 94-29, 89 Stat. 97 (1975).

¹⁰ The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., is not applicable because the proposed actions are not subject to public notice and comment.

misrepresenting the results of its operations by distributing stock dividends or their equivalent to shareholders unless the issuer has earned surplus sufficient to cover the fair value of the shares distributed. Proposed Rule 10b-20 would prohibit certain "tie-in" arrangements in connection with an offering of securities. The Commission is withdrawing these rules because a substantial period of time has elapsed since their proposal by the Commission, and because subsequent developments suggest that the formulation of the rules as proposed may no longer be appropriate. The withdrawal of these proposed rules, however, does not imply that the Commission is no longer concerned with the conduct addressed by the proposals.

FOR FURTHER INFORMATION CONTACT: Jodie Kelley at (202) 272-2876, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Proposed Rule 10b-11

Rule 10b-11, proposed in 1976,¹ would prohibit any person from effecting a short sale of any equity security for his own account or the account of any other person unless he, or the person for whose account the short sale is effected, (1) has borrowed the security, or has entered into an arrangement for the borrowing of the security, or (2) has reasonable grounds to believe that he, or the person for whose account the short sale is effected, can borrow the security, so that, in either event, he or the person for whose account the short sale is effected, will be capable of delivering the security on the date delivery is due.

Proposed Rule 10b-11 was part of a comprehensive public fact-finding and rulemaking proceeding on short sales to determine whether short sale regulation continued to be necessary.² The Commission recognized that the proposed rule in all likelihood reflected industry practice, but believed that an express obligation with respect to a short seller's ability to meet delivery requirements was appropriate should short sale rules be rescinded.³ Three

commentators on proposed Rule 10b-11 indicated support for the proposed rule and two commentators opposed the proposed rule.⁴

Since the time that the rule was proposed, the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD") have adopted interpretations specifying that members should not accept or enter a short sale order unless prior arrangements to borrow the stock have been made, or other acceptable assurances that delivery can be made on settlement date have been obtained.⁵ As noted above, Rule 10b-11 was proposed as a component of a contemplated program of short sale deregulation.⁶ To date, the Commission has not determined to implement such a program. Finally, the Commission believes that the general antifraud provisions of the federal securities laws are applicable to activity addressed by Rule 10b-11.⁷

In light of the foregoing considerations and the passage of twelve years since the Commission proposed Rule 10b-11, the Commission has determined to withdraw proposed Rule 10b-11.

Proposed Rule 10b-12

Rule 10b-12, proposed in 1966,⁸ would preclude an issuer whose stock is publicly offered or traded from misrepresenting the results of its operations by distributing stock dividends or their equivalent to shareholders unless the issuer has earned surplus sufficient to cover the fair value of the shares distributed. The rule would not affect traditional stock splits involving the distribution of at least an additional share for each share outstanding. A large proportion of the more than one hundred comment letters received regarding proposed Rule 10b-12 requested that banks and stock insurance companies be exempted from the rule because both are highly regulated entities. Of the remaining comments, a majority expressed opposition to the rule. A small minority

of those commenting supported the proposed rule.⁹

In light of: (1) The Commission's subsequent issuance of an interpretative release advising that an issuer's pro rata distribution of stock dividends without sufficient retained earnings or current income may raise questions under the antifraud and anti-manipulation provisions of the Exchange Act;¹⁰ (2) the treatment of pro rata distributions of stock dividends under generally accepted accounting principles;¹¹ and (3) the significant passage of time since Rule 10b-12 was proposed, the Commission is withdrawing proposed Rule 10b-12.

Proposed Rule 10b-20

Rule 10b-20, proposed by the Commission in 1974¹² and repropose with revisions in 1975,¹³ would prohibit certain "tie-in" arrangements in connection with an offering of securities. The proposed rule would prohibit broker-dealers and others from explicitly or implicitly demanding from their customers any payment or consideration in addition to the announced offering price of any securities. The proposal was intended to prohibit the practice whereby underwriters induced persons to purchase "sticky" issues with the opportunity to purchase more attractive "hot" issues. Of those who responded to the Commission's request for comments on the rule as proposed and repropose, three commentators indicated support for the proposal and two opposed it.¹⁴

In view of the substantial period of time that has elapsed since Rule 10b-20 was proposed and the fact that "tie-in" arrangements may be reached under existing antifraud and anti-manipulation provisions of the federal securities laws,¹⁵ the Commission has determined to withdraw proposed Rule 10b-20.

⁹ The comment letters are contained in File No. S7-325.

¹⁰ Securities Exchange Act Release No. 9618 (June 1, 1972), 37 FR 11559.

¹¹ American Institute of Certified Public Accountants (AICPA), Accounting Research Bulletin No. 43, Chapter 7B, ¶10 and ¶13 (1953).

¹² Securities Exchange Act Release No. 10636 (February 11, 1974), 39 FR 7806 (also proposing Rule 10b-21).

¹³ Securities Exchange Act Release No. 11328 (April 2, 1975), 40 FR 16090 (also repropose Rule 10b-21).

¹⁴ The comment letters are contained in File No. S7-510.

¹⁵ See Report of the Securities and Exchange Commission Concerning the Hot Issues Markets (August 1984), at Section IV.C.3., "Tie-in and Reciprocal Arrangements."

¹ See Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 ("Release 34-13091").

² *Id.*

³ While the Commission in 1980 withdrew certain of the short sale deregulation proposals, the Commission did not withdraw proposed Rule 10b-11 at that time. Securities Exchange Act Release No. 17347 (November 28, 1980), 45 FR 80834, 80834 note 6.

⁴ The comment letters are contained in File No. S7-865.

⁵ See NYSE Rule 440C, "Deliveries Against Short Sales," NYSE Guide (CCH) ¶ 2440C, and NYSE Interpretation 10/01 to Rule 440C, "Short Sales"; NASD Rules of Fair Practice, Article III, Section 1, NASD Manual (CCH) ¶ 2151.04, Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities.

⁶ Release 34-13091, 42 FR 56530.

⁷ See, e.g., Securities Exchange Act Release No. 6778 (April 16, 1962).

⁸ Securities Exchange Act Release No. 8268 (March 7, 1968), 33 FR 4632.

By the Commission.

Shirley E. Hollis,
Assistant Secretary.

October 14, 1988.

[FR Doc. 88-24231 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Abandoned Mine Land Reclamation Plan; Public Comment Period and Opportunity for Public Hearing on Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Ohio Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the proposed policies and procedures with which Ohio would conduct the AMLR emergency program on behalf of the OSMRE.

This notice sets forth the times and locations that the Ohio Plan and proposed amendments to that Plan will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, 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 p.m. on November 21, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on November 14, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on November 4, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio Plan, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the

proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA establishes an abandoned mined land reclamation (AMLR) program for the purpose of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the mining of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate state of reclamation prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State of Federal law. Title IV provides that a State with an approved AMLR Plan has the responsibility and primary authority to implement an abandoned mine land reclamation program in that State.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR Plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR Plan, the Director must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The Ohio Plan was approved by the Secretary on August 10, 1982 (47 FR 34728). On July 14, 1988, Ohio submitted proposed amendments to that Plan. This notice of proposed rulemaking begins the review process on the proposed amendments to the Ohio Plan.

II. Discussion of the Proposed Amendments

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSMRE invited States to

amend their AMLR Plans for the purpose of undertaking emergency reclamation programs on behalf of OSMRE. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

By letter dated July 14, 1988 (Administrative Record No. OH-1071), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed amendments to the Ohio Plan intended to demonstrate Ohio's capability of effectively performing the AMLR emergency program for OSMRE. The proposed revisions to the Ohio Plan are briefly summarized below:

(1) Section 1: Summary

The proposed amendments would substitute references to Ohio staff in places where OSMRE actions on emergencies are described in Section 1.9 and 1.10. The investigation of emergency situations would also be added to Ohio's AMLR field evaluation responsibilities listed in Section 1.9.

(2) Section 2: Legal Authority

The proposed amendments would include budgets and accounts for emergency work in the items listed in Section 2.3 which make up AMLR grant applications submitted by Ohio to OSMRE.

(3) Section 3: Description of the Proposed AMLR Program

The proposed amendments would specify in Section 3.4.1 that OSMRE-administered emergency projects occur in States not authorized to conduct the emergency program. References to Ohio staff would also be substituted for OSMRE actions on Ohio emergencies discussed in Sections 3.4.1 and 3.4.3. Also, the time period for action on emergencies would be reduced from "3 to 6 months" to "1 to 6 months" in Table 3.4.3.1.

(4) Section 4: Abandoned Mined Land Evaluation Program

The proposed amendments would delete reference to OSMRE action on emergencies in Figure 4.1.1.2. In Section 4.2, OSMRE involvement in emergency investigations would be revised to include joint site reviews with Ohio staff. OSMRE concurrence and approval of Ohio emergency determinations would be specified in Figure 4.2.1. References to Ohio staff and actions

would be substituted for equivalent OSMRE actions in Sections 4.2. Emergency project work would be included in Section 4.5 under the work to be submitted by Ohio to OSMRE for approval in annual AMLR construction grants.

(5) Section 5: Administration and Management

In Section 5.1.3.1, responsibilities and job titles of specific Ohio staff positions would be revised and updated. One supervisor and one environmental scientist position would be assigned coordination of the Ohio emergency program. Identification and documentation of emergencies would be made a responsibility of the Field Operations Subsection of the Ohio Abandoned Mined Lands Section. In Section 5.1.3.2, emergency program responsibilities for consultant selection and design preparation would be added for the Ohio Engineering Section.

In Section 5.3, the allowance for open-ended contracts for emergency project work would be made. Added text would also specify that normal State bidding procedures are to be waived for emergency work in favor of using preapproved contractors. The added text and table 5.3.6 would specify the procedures for selection of emergency project design and construction contractors. Reference would also be made to the Ohio AMLR procedures manual on file at the Ohio Department of Natural Resources, Division of Reclamation, which describes the emergency procurement procedures in greater detail.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 884.14. If the amendments are deemed adequate, they will become part of the Ohio 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 Columbus 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 p.m. on November 4, 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 Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

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

Date: October 14, 1988.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 88-24264 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP8E3620/P468; FRL-3465-6]

Pesticide Tolerances for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter referred to in the preamble as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on Belgian endive tops (chicory tops) at 5 parts per million (ppm). This regulation, to establish a maximum permissible level for residues of vinclozolin on Belgian endive tops, was requested by BASF Wyandotte Corp.

DATE: Comments, identified by the document control number [PP8E3620/P468], should be received on or before November 21, 1988.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: BASF

Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, submitted pesticide petition (PP) 8E3620 proposing the establishment of a tolerance for the combined residues of the fungicide vinclozolin and its metabolites in or on the raw agricultural commodity Belgian endive tops (chicory tops) at 5.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 450 ppm (22.5 mg/kg/day), the highest dose tested (HDT).
2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).
3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).
4. A mouse teratology study with a NOEL for maternal toxicity of 6,000 ppm (900 mg/kg/day) and a NOEL for developmental toxicity of 600 ppm (90 mg/kg/day).
5. A rabbit teratology study with a NOEL for maternal toxicity of > 300 mg/kg/day (9,900 ppm) and a NOEL for developmental toxicity of 80 mg/kg/day (2,640 ppm).
6. A chronic feeding/oncogenicity study in rats for 103 weeks, with a NOEL of 486 ppm (24 mg/kg) for chronic effects, and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (219 mg/kg/body weight [bw]/day), the HDT.
7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL of 486 ppm (73 mg/kg) for chronic effects and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (503 mg/kg/bwt/day), the HDT.
8. A dominant lethal assay in mice was negative at 2,000 mg/kg (only level tested).
9. Sister chromatid exchange study in the bone marrow of the Chinese hamster was negative.
10. Reverse mutation test in *Salmonella typhimurium* with and without a metabolic activation system which was negative for mutagenic effects.
11. An *in vivo* reverse mutation assay using *Salmonella typhimurium* was negative.
12. A primary rate hepatocyte unscheduled DNA synthesis assay which showed negative mutagenic activity and a mouse lymphoma forward mutation assay which showed weak positive mutagenic activity only at concentrations exceeding solubility in the test medium.
13. A forward mutation assay (the CHO/HGPRT assay) was negative with and without metabolic activation. The studies satisfy requirements for a DNA damage/repair assay in mammalian cells and gene mutation cells in culture.

Based on the NOEL of 2.5 mg/kg bwt/day in the 6-month dog feeding study, and using a hundredfold uncertainty factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.025 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.014375 mg/kg bwt/day. The proposed action would increase the TMRC to 0.14378 (0.5 percent of the ADI). The total percent of the ADI utilized is 57.51.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) *Pesticide Analytical Manual* for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, meat, or poultry from the use on Belgian endive tops.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

Interested persons are invited to submit written comments on the proposed tolerances. Comments must bear a notation indicating the document control number (PP8E3620/P468). All written comments filed in response to this document will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice, and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 11, 1988.

Edwin F. Tinsworth,
Acting Director, Registration Division, Office
of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 246a.

2. Section 180.380(a) is amended by adding and alphabetically inserting the entry for the commodity Belgian endive tops, to read as follows:

§ 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione; tolerances for residues.

(a) * * *

Commodity	Parts per million
Belgian endive, tops.....	5.0

[FR Doc. 88-24345 Filed 10-19-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 257 and 258

[FRL-3465-5]

Solid Waste Disposal Facility Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 30, 1988, EPA published a proposed rule and request for comment (53 FR 33313). That notice proposed revisions to the Criteria for Classification of Solid Waste Disposal Facilities and Practices as set forth in 40 CFR Part 257. In addition, the notice proposed to add a new Part 258 specifying requirements for municipal solid waste landfills (MSWLFs) only. The Agency has received requests to extend the comment period in order to allow additional time to review and comment on the proposal. Specifically, extensions have been requested to allow States to perform an in-depth assessment of how the proposed regulation will affect their programs, and to allow owners and operators of disposal facilities time to assess the impacts of the proposed regulation, especially the financial assurance, ground-water monitoring, and corrective action requirements. We find the request

for a 30-day extension appropriate and, therefore, grant the extension.

DATE: The Agency will accept comments submitted on or before November 30, 1988.

ADDRESSES: Commentors must send an original and two copies of their comments to: RCRA Docket Information Center, [OS-305], U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460. Comments should include the docket number F-88-CMLP-FFFFF. The public docket is located at EPA Headquarters (sub-basement) and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 475-9327. Copies cost \$0.15/page.

FOR FURTHER INFORMATION CONTACT: Either Allen Geswein or Paul Cassidy, Office of Solid Waste, at (202) 382-4659 or 382-3346.

Dated: October 13, 1988.

Joseph Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-24342 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 88-031]

RIN 2115-AC99

Documentation of Vessels; Controlling Interest

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the vessel documentation regulations in 46 CFR Part 67 to implement the American control provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 ("the Act"). The Act makes a substantive change to the laws affecting the documentation of vessels by making a vessel owned by a corporation ineligible for a fishery license unless the controlling interest in the corporation is owned by United States citizens, and has a retroactive effective date for applicability of the new American control provision. The proposed regulations would establish standards for determining the permissible foreign participation in the ownership of vessels seeking a fishery license endorsement.

DATE: Comments must be received on or before November 21, 1988.

ADDRESSES: Comments may be mailed to Commandant (G-LRA-1/21)(CGD 88-031), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

Comments will be available for examination or copying at, and may be delivered to, Room 2110, at the above address, between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Bruce Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1492. Normal office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-031) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held if written requests for a public hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Uniform Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant Commander Gregory L. Oxley, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in a specified trade. The evidence of nationality is the Certificate of Documentation. One or more licenses endorsed on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in a specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is eligible for documentation generally and eligible for the specific license or licenses requested; and (c) issues Certificates of Documentation to eligible vessels.

On January 11, 1988, the President signed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239, 101 Stat. 1778 (1988)) ("the Act") into law. The new law, among other things, amends the existing statute pertaining to vessel documentation by imposing a controlling interest test on vessels owned by corporations. The change is retroactively effective to July 28, 1987. Several sections of the existing vessel documentation regulations found in 46 CFR Part 67 are now in direct conflict with the statute. The Coast Guard has been applying the vessel statutory requirements pending revision of the regulations.

The only vessels which are eligible for documentation under United States law are those which are of at least five net tons and not registered under the laws of a foreign country. A vessel must also be owned by an individual United States citizen or an entity which meets prescribed citizenship criteria which vary with the nature of the entity and type of license. These criteria are listed in 46 U.S.C. 12102, as amended. A vessel which is eligible for documentation is eligible for a registry endorsement. There are additional eligibility criteria relating to both the vessel and its owner which must be met for the domestic trade entitlements evidenced by a fishery license, a coastwise license, and a Great Lakes license.

With the exception of the American control provision of the Act, the changes to the regulations mandated by the Act are being published as a final rule in today's issue of the *Federal Register*.

The precise applicability of the American control provision of the Act is open to interpretation. The Coast Guard is, therefore, publishing its interpretation

of this new provision and soliciting comments.

Discussion of the Proposed Rule

The basic citizenship requirements for a vessel owner are prescribed by 46 U.S.C. 12102. Prior to the Act, an owner who was eligible to document vessels, generally, was also eligible to document vessels with a fishery license endorsement without further citizenship requirements. The only time a vessel owner was required to pass a more stringent citizenship test was if applying for a coastwise of Great Lakes license. In the case of a coastwise license, if the owner was other than a natural person, the strictures of 46 U.S.C. App. 802 apply and 75% of the interest in the entity must have been held by United States citizens. Ownership of a vessel seeking a Great Lakes license was subject to the same restrictions. These requirements are reflected in the vessel documentation regulations in Part 67 and were not changed by the Act. The Act did, however, introduce a new controlling interest test for the owners of vessels seeking a fishery license.

Section 7 of the Act amends 46 U.S.C. 12102 by adding the following:

A vessel owned by a corporation is not eligible for a fishery license under section 12108 of this title unless the controlling interest (as measured by a majority of voting shares in that corporation) is owned by individuals who are citizens of the United States. However, if the corporation is owned whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.

At first, this provision would seem to indicate that only where a fishery license is sought for a vessel whose title is held directly by a corporation, would the corporation be subject to the new American control test. It would seem to indicate that where, for example, title was held by a partnership comprised of corporate partners, those partners would not be subjected to the new test.

The new provision, however, must be looked at in light of existing practice by the Coast Guard in determining eligibility for documentation. As previously mentioned, the Coast Guard has been applying a 75% controlling interest test in regard to coastwise licenses. In applying that test to entities such as partnerships which are comprised of corporations, the Coast Guard has traditionally held that any subordinate entity which contributes to the citizenship of the title holder must be

qualified to document a vessel with the requested license in its own right. To do otherwise, would mean implementing the law in a way which would allow a corporation to do what it could not be directly by simply forming a partnership or a subsidiary.

In implementing section 7 of the Act, the Coast Guard proposes to continue this administrative practice in regard to fishery licenses; substituting, however, a greater than 50% controlling interest test for the coastwise 75% test. To do otherwise would be inconsistent with existing practice. To not subject corporate participants contributing to the legal title holder's citizenship to the controlling interest test would allow such corporations to do indirectly what they could not do directly, through the formation of a subsidiary or partnership. Such an approach would make the American control provision virtually meaningless. The Coast Guard and its predecessors in administration of the vessel documentation laws have never followed such an approach.

Where the owner of a vessel seeking a fishery license is a corporation, clearly, the control of that corporation must be held by United States citizens. Where one or more other corporations own the majority of the stock of the corporation which holds title to the vessel, such as in a parent/subsidiary arrangement, each of those corporations must have their controlling interest held by United States citizens.

Where the owner of a vessel seeking a fishery license is an entity other than a corporation, but is comprised in whole or in part, of corporations, if those corporations are contributing to the citizenship requirement of the entity holding the title, the requirement is that they must be qualified to document a vessel with a fishery license in their own right.

The proposed rulemaking would amend § 67.03-1 by adding provisions applicable to complex ownership arrangements and structures. It would also amend § 67.03-9 to indicate that a corporation is a citizen for the purpose of obtaining a fishery license if the controlling interest in the corporation is held by individual United States citizens. Proposed § 67.17-9 would provide for a temporary loss of fisheries entitlement whenever title to a vessel is not held by a fisheries entitled owner.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order

12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation has been found to be so minimal that further evaluation is unnecessary. The regulation merely makes changes in eligibility requirements for vessel documentation mandated by statute.

Federalism

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

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of this regulation. There is no significant economic impact, however, because the regulation recognizes the saving's provisions of the statute. Those provisions serve to protect those who have made verifiable financial commitments based on the laws and regulations in existence prior to enactment.

Paperwork Reduction Act

This rulemaking imposes no new paperwork burden on the public.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concludes that under the categorical exclusion provision in section 2-B-3.h. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, an Environmental Impact Statement, or a Finding of No Significant Impact for this regulation is not required. This regulation is an administrative and procedural regulation which clearly has no environmental impact.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR Part 67 is proposed to be amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for Part 67 continues to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 12121; 46 U.S.C. App. 841a, 876, 927, 983; 49 CFR 1.46.

2. Section 67.03-1 is amended by designating the existing text paragraph (a) and adding paragraph (b) to read as follows:

§ 67.03-1 Requirement for citizen owner.

(b) Where title to a vessel is held by an entity other than an individual person, and that entity is comprised, in whole or in part, of other entities, which are not individuals, the subordinate entities contributing to the citizenship qualifications of the entity holding title must be citizens eligible to document vessels in their own right with the license sought.

3. Section 67.03-9 is amended by revising the introductory text of paragraph (a), redesignating existing paragraph (d) as (e), and adding a new paragraph (d) to read as follows:

§ 67.03-9 Corporation.

(a) A corporation is a citizen for the purposes of obtaining a registry or a pleasure license if:

(d) A corporation is a citizen for the purposes of obtaining a fishery license endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) The controlling interest (as measured by a majority of voting shares in the corporation) is owned by individuals or entities who meet the citizenship requirements of this subpart.

4. Section 67.17-9 is amended by adding a new paragraph (c) to read as follows:

§ 67.17-9 Fishery license.

(c) A vessel otherwise eligible for a fishery license endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by any entity which does not meet the citizenship requirements of Subpart 67.03.

Dated: August 18, 1988.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office for Marine Safety, Security and Environmental Protection.

[FR Doc. 88-24358 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 2 and 80**

[Gen. Docket No. 88-372]

Amendment of Parts 2 and 80 of the Commission's Rules Applicable to Automated Maritime Telecommunications Systems (AMTS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Private Radio Bureau has adopted an Order granting the Motion for Extension of Time to file reply comments filed by Waterway Communications Systems, Inc. in this proceeding concerning Automated Maritime Telecommunications Systems (AMTS). The Notice of Proposed Rule Making was published on August 10, 1988 at 53 FR 30075 and requested comments by September 26, 1988 and replies by October 11, 1988. Watercom stated that additional time is needed to prepare a complete analysis of the comments so that it can contribute to a more complete and accurate record.

DATE: Reply comments are now due by October 31, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carol Fox Foelak, Private Radio Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION:**Order**

Adopted: October 5, 1988.

1. Under consideration is a request for extension of time filed by Waterway Communications System, Inc. (Watercom) on October 3, 1988, in the above captioned matter. The Notice of Proposed Rule Making in this matter provided that comments could be filed on or before September 26, 1988, and reply comments, on or before October 11, 1988. Watercom requests an additional 20 days, until October 31, 1988, to file reply comments.

2. Watercom states that the additional time is needed to prepare a complete analysis of the comments, which include highly technical matters so that it can contribute to a more complete and accurate record in this rule making. Additionally, Watercom is the party which petitioned for the rule changes proposed in this proceeding, and no other party is likely to be prejudiced by the requested extension.

3. In view of the above and pursuant to the authority contained in § 0.331 of the Commission's Rules, 47 CFR 0.331, Watercom's request for extension of time is granted. Reply comments are due October 31, 1988.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 88-24153 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-472, RM-6395]

Radio Broadcasting Services; Ackerman and Cleveland, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by French Camp Radio, Inc. and Carol B. Ingram, proposing the substitution of FM Channel 300C for Channel 300C1 at Ackerman, Mississippi, and modification of the license for FM Station WFCA to specify operation on Channel 300C. Channel 300C can be allotted to Ackerman at the current site of Station WFCA. The coordinates for Channel 300C are 33-25-25 and 89-24-13. To accommodate the proposed upgrade at Ackerman, Channel 295A must be substituted for Channel 299A at Cleveland, Mississippi. The channel was allotted to Cleveland in MM Docket 84-231 and made available in Window No. 51. The applicant for Channel 299A, Carol B. Ingram, has indicated her willingness to substitute Channel 295A for Channel 299A at Cleveland with a site restriction 3.1 kilometers northwest of the community. The coordinates for Channel 295A are 33-46-04 and 90-44-37.

DATES: Comments must be filed on or before November 15, 1988, and reply comments on or before December 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William E. Kennard, Susan F. Heck, Verner, Liipfert, Bernhard, McPherson & Hand, 1660 L Street NW., Suite 1000, Washington, DC 20036 (Counsel for French Camp Radio, Inc. and Carol B. Ingram).

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-472, adopted September 1, 1988, and released October 3, 1988. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-24282 Filed 10-19-88; 8:45 am]

BILLING CODE 6712-01-48

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 661 and 663

[Docket No. 80750-8150]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California and Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this rule to propose modifications to the regulations implementing the fishery management plans (FMPs) for the ocean salmon and Pacific coast groundfish fisheries in the exclusive economic zone (3-200 nautical miles) off the coasts of Washington, Oregon, and California. Comments are invited. This action is necessary to clarify certain provisions of the trip limit restrictions for Pacific coast groundfish and to provide consistency between the Pacific coast groundfish and ocean salmon regulations. It is intended to simplify enforcement of regional fisheries regulations.

DATE: Comments on this proposed rule are invited until November 18, 1988.

ADDRESSES: Comments on this proposed rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140; or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMPs for the commercial and recreational salmon fisheries and the Pacific coast groundfish fishery off the coasts of Washington, Oregon, and California were prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary). Implementing regulations governing the ocean salmon and Pacific coast groundfish domestic fisheries are codified at 50 CFR Parts 661 and 663, respectively.

Several species and species categories regulated under the groundfish FMP are subject to weekly, biweekly, and/or twice-weekly trip limits. A "trip limit" is defined as "the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, which may be landed from a single fishing trip." "Fishing trip" is defined as "a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish." "Land or landing" means "to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded." These definitions are found in the current regulations at § 663.2.

Due to the wording of the definition of "land or landing," a question has arisen as to whether it is permissible for a fisherman to land a weekly (or biweekly or twice-weekly) trip limit and then continue to fish on the next week's limit and return to port during the same week so long as he does not offload until the second week. Although the regulations have not been construed to prohibit this practice, the wording of the definitions has occasionally raised questions among law enforcement personnel and the fishing industry as to whether it is or should be allowed.

Following discussion at its March 8-11, 1988 meeting in Seattle, Washington, and its April 5-8, 1988 meeting in Millbrae, California, the Council recommended to NOAA that the

groundfish regulations be revised to clarify that a vessel operator arriving in port prior to the end of a fishing period would not be in violation of trip limits even if he had already landed the legal maximum for that period, unless he began to offload fish again before the next legal period. For consistency in definitions, the Council recommended that the salmon regulations also be revised.

NOAA agrees with these recommendations and proposes revisions to the definitions of "land or landing" in both the groundfish and salmon regulations. NOAA also proposes to change the definition of "fishing trip" in the groundfish regulations to eliminate the reference to leaving port. This change is necessary to clarify that trip limits apply to fishermen delivering to processing vessels at sea, whether or not they return to port between deliveries.

This proposed rule would clarify landing restrictions in the groundfish and ocean salmon fisheries, provide consistency between regional fisheries regulations, and facilitate enforcement. This action is necessary to ensure that authorized officers and fishermen have a clear understanding of the trip limit regulations in the groundfish fishery and to avoid any confusion which may result from using inconsistent definitions in the groundfish and ocean salmon fisheries.

Classification

This proposed rule is published under the authority of section 305(g) of the Magnuson Act. The Under Secretary for Oceans and Atmosphere (Under Secretary), before publishing a final rule, will take into account the data and comments received during the comment period.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10. This is because this action proposes only minor technical changes to the existing implementing regulations and, if adopted as proposed, would not result in a significant effect on the human environment. This action is not expected to alter the nature or intensity of environmental impacts which were addressed in: (1) The environmental assessment for the 1988 management measures implemented under the FMP for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, or (2) the supplemental environmental impact statements (SEIS) prepared by the Council for the Pacific Coast Groundfish FMP and the

environmental assessments for the three amendments to the FMP.

The Under Secretary determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Because the proposed changes to the regulatory text only clarify but do not change the current application of landing restrictions, this action will not impose any direct costs on industry and will not affect competition, employment, investment, productivity, or innovation. While no costs are expected from the action, enforcement benefits will occur from more clear and consistent regulations.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the measures to be implemented are technical in nature and serve to clarify the intent and scope of existing legal authorities. As a result, these measures are not expected to alter fishing practices or impose costs on the industry, and a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

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

List of Subjects in 50 CFR Parts 661 and 663

Fisheries, Fishing.

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

Dated: October 14, 1988.

William Matuszeski,

Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 661 and 663 are proposed to be amended as follows:

PARTS 661 AND 663—[AMENDED]

1. The authority citation for 50 CFR Parts 661 and 663 continues to read as follows:

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

2. In § 661.3, the definition of *land or landing* is revised to read as follows:

§ 661.3 Definitions.

Land or landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

3. In § 663.2, the definitions of *fishing trip* and *land or landing* are revised to read as follows:

§ 663.2 Definitions.

Fishing trip means a period of time between landings when fishing is conducted.

Land or landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

[FR Doc. 88-24336 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 53, No. 203

Thursday, October 20, 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

Forms Under Review by Office of Management and Budget

October 14, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

- Food and Nutrition Service, Food Stamp Program, Benefits Redemption Division

Food Stamp Application to Accept and Redeem Food Stamps

FNS-252, FNS-252-2, FNS-350

On Occasion

Businesses or other for-profit; 111,670 responses; 18,679 hours; not applicable under section 3504(h)

Suzanne Fecteau (703) 756-3419

- Food and Nutrition Service Monthly Report of Commodity Supplemental Food and Quarterly Administrative

Financial Status Report.

FNS-153

Monthly, Quarterly

State or local governments; 240 responses; 1,512 hours; not applicable under section 3504(h)

Linda Gray-Jeffries or Jackie Williams (703) 756-3710

Extension

- Forest Service Free Use Permit—Timber FS-2400-8

On Occasion, Annually

Individuals or households; Federal agencies or employees; 210,000 responses; 42,000 hours; not applicable under section 3504(h)

Rena Gary (202) 475-3761

- Soil Conservation Service Conservation Plan of Operations SCS-CPA-11, SCS-CPA-11A, SCS-CPA-12, SCS-CPA-11

Recordkeeping, On Occasion, Annually

Individuals or households; Farms; 300,000 responses; 53,750 hours; not applicable under section 3504(h)

Bobby E. Rakestraw (202) 382-1866

- Departmental Administration—Office of Operations

Solicitation/Award/Administration of Contracts for Procuring Goods and Services

None

On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 638,800 responses; 129,000 hours; not applicable under section 3504(h)

Larry Schreier (202) 447-8924

Emergency

- Animal and Plant Health Inspection Service

National Poultry Improvement Plan (NPIP)

None

One-time only

State or local governments; Federal agencies or employees; Non-profit institutions; 3,000 responses; 750 hours; not applicable under section 3504(h)

Irvin L. Peterson (301) 436-5140

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-24224 Filed 10-19-88; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Mountain Meadow Guest Ranch; Medicine Bow National Forest, Albany County, WY; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the expansion of the Mountain Meadow Guest Ranch on the Laramie Ranger District located in the Snowy Range Area of the Medicine Bow National Forest.

The Land and Resource Management Plan (Forest Plan) was approved on November 20, 1985. One of the issues addressed in the Plan was the "Desirable variety, amount and quality of developed recreation opportunity" to provide on the Forest (Planning Problem Statement 2, page II-35). In response to comments received on the proposed Plan, the schedule for construction and expansion of developed recreation sites was increased (Forest Plan, Appendix I) in order to meet projected demand. The Mountain Meadow facility is not on the schedule; however, because it is under permit by a private developer.

The Mountain Meadow Guest Ranch is located near the Snowy Range Highway (State Highway 130) approximately five miles west of Centennial, Wyoming. The highway was designated a National Scenic Byway during September 1988 and is a highly traveled route during the summer months. The area is managed with emphasis on rural and roaded-natural recreation opportunities as Management Area 2B. Conventional use of highway-type vehicles is provided for in design and construction of facilities (Forest Plan, page III-105).

A range of alternatives for the site will be considered. One of these will be no expansion. Other alternatives will consider a range of developments including additional cabins, a new lodge facility, and a full service recreation vehicle campground. This proposal is unique in that no full service recreation vehicle camping facility currently exists on the Medicine Bow National Forest. Selection of an expansion alternative may require an amendment to the Forest Plan to be entirely consistent with the Forest Plan.

Federal, State, and local agencies, potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest, is the responsible official.

The analysis is expected to take about six months. The draft environmental impact statement should be available for public review by January 1, 1989. The final environmental impact statement is scheduled to be completed by May 1989.

Written comments and suggestions concerning the analysis should be sent to Gerald G. Heath, Forest Supervisor, Medicine Bow National Forest, 605 Skyline Drive, Laramie, Wyoming 82070, by November 30, 1988.

Questions about the proposed action and environmental impact statement should be directed to Ron Wilcox, Laramie District Ranger, 605 Skyline Drive, Laramie, Wyoming 82070, 307-745-8971.

Ron Olsen,

Acting Forest Supervisor.

October 11, 1988.

[FR Doc. 88-24310 Filed 10-19-88; 8:45 am]

BILLING CODE 3410-11-M

Environmental Impact Statement; Heritage Mountain Recreational Development; Utah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Heritage Mountain, Inc. will prepare an environmental impact statement for a proposed recreational

development in the Provo Peak Basin Area within the Uinta National Forest, to be approved by the USDA Forest Service, Uinta National Forest. This proposal is in keeping with direction established in the Uinta National Forest Land and Resource Management Plan.

An Environmental Impact Statement for the development of a Heritage Mountain Recreation Area was completed in October 1976. The decision at that time was to allow ski development on 4,500 acres of National Forest system land east of Provo, Utah. The proposed action was never implemented.

A new application for developing a Heritage Mountain Recreation Area has been received by the Uinta National Forest. Evolving issues and changed conditions since the completion of the 1970's EIS, require the Forest Service to reevaluate this new proposal through the NEPA process.

A range of alternatives for this proposal will be considered. One of these will be nondevelopment. Other alternatives will consider levels of development that enhanced economic opportunities for area communities, and protect existing resource values. All development alternatives will place maximum emphasis on administration to ensure that established procedures included in the special-use permit, master plan, environmental impact statement, etc., are strictly followed.

Federal, State, and local agencies, potential developers, organizations, landowners, and individuals who may be interested in or affected by this proposal will be invited to participate in the scoping process. This process will include:

1. Identification of potential public issues, management concerns, and resource development opportunities.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by previous environmental analyses and reviews.
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. Determination of potential cooperating agencies, organizations, groups, and individuals, and the assignment of responsibilities.

The Fish and Wildlife Service, and the Department of the Interior will be consulted in identifying and evaluating potential impacts on threatened and endangered species habitat if any are found to exist within the proposal area.

DATE: An open house will be held between the hours of 10:00 a.m. to 8:00 p.m. on Wednesday, November 9, 1988, at the Excelsior Hotel, 101 West 100 North, Provo, Utah, to explain preliminary alternatives, and to identify any additional alternatives to be studied and receive comments. Comments will be received until December 9, 1988.

The analysis is expected to be concluded in February 1989. The draft environmental impact statement should be available for public review by March 17, 1989.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the *Federal Register*. It is very important that those interested in the management of the proposed area participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.) In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). 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, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The final environmental impact statement is scheduled to be completed by July 5, 1989.

Responsible Official: The responsible official is Forest Supervisor Don T. Nebeker, Uinta National Forest, 88 West 100 North, Provo, UT 84601 (Phone: 801-377-5780).

Comments: By December 9, 1988, written comments and suggestions concerning the analysis should be sent to Gary M. Coleman, Planning Consultant for Heritage Mountain, Inc., P.O. Box 106, Midway, Utah, 84049, (801-

654-3024), or Heritage Mountain, Inc., Provo, UT 84601, (801-375-5155).

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and environmental impact statement should be directed to Gary M. Coleman, Planning Consultant, P.O. Box 106, Midway, Utah, 84049, phone (801) 654-3024, or Heritage Mountain Inc., Provo, Utah, 84601, phone (801) 375-5155.

SUPPLEMENTARY INFORMATION:

The Uinta National Forest Land and Resource Management Plan was approved in 1985. Standards and guidelines for the Plan direct the use of existing and future developed base areas and jumping-off points for dispersed recreation activities, and continued management of areas to the highest density possible to meet Forest objectives and to supply the Unit's portion of recreation opportunities consistent with the coordinated State-wide Program.

Date: October 12, 1988.

Don T. Nebeker,

Forest Supervisor.

[FR Doc. 88-24300 Filed 10-19-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on November 17, 1988, at the Federal Building, 701 C Street, (Room C-122), Anchorage, Alaska 99513. The purpose of the meeting is to develop future program plans and to discuss follow-up activities to its project on minority and women's business enterprise programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Committee.

Dated at Washington, DC, October 14, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 88-24306 Filed 10-19-88; 8:45 am]

BILLING CODE 6335-01-M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m., on November 12, 1988, at the Sheraton Hotel, 400 10th Avenue South, Great Falls, Montana 59405. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty Babcock or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Committee.

Dated at Washington, DC, October 14, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 88-24307 Filed 10-19-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 24, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers four manufacturers/

exporters of this merchandise to the United States and the period May 1, 1985 through April 30, 1986.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of clerical errors, we have changed the margin for one company. An Mau Steel Co. Ltd., from that presented in the preliminary results of review.

EFFECTIVE DATE: October 20, 1988.

FOR FURTHER INFORMATION CONTACT:

Maura Kim or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 23706) the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (49 FR 19369, May 7, 1984). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inches, and 0.375 inches or more but not over 4.5 inches in outside diameter, currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243 and 610.3252 of the Tariff Schedules of the United States Annotated ("TSUSA") and item 7306.30.50 under the Harmonized System ("HS").

The review covers four manufacturers and/or exporters of Taiwanese circular welded carbon steel pipes and tubes to the United States and the period May 1, 1985 through April 30, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. The petitioner, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, and one respondent, An Mau, submitted comments.

Comment 1: The petitioner argues that An Mau's physical inventory loss was not included in selling, general, and

administrative expenses ("SG&A") or profit and, therefore, must be a part of the cost of manufacture; in calculating constructed value, then, the Department should include physical inventory loss as part of the cost of manufacture rather than as a separate item.

An Mau argues that physical inventory loss has actually been included in the constructed value computation as part of "other operating expenses" in SG&A. Since this expense has been accounted for in SG&A, it should not appear as a separate figure in the calculation of constructed value, as it did for the preliminary results.

Department's Position: Upon review of An Mau's original questionnaire response and the cost verification exhibit which details the reconciliation of SG&A expenses, we have determined that An Mau included a loss on physical inventory in its SG&A expenses. We have eliminated the separate addition of this item to total constructed value.

However, physical inventory loss is considered a cost of manufacture because it is directly related to production. Therefore, for the final results, the Department has included the physical inventory loss in the cost of manufacture, not in SG&A expenses.

Comment 2: Petitioner argues that An Mau underreported its cost of manufacture ("COM"). Petitioner subtracts An Mau's SG&A and profit, calculated at the actual rates for 1985, as reported in An Mau's submission, from a hypothetical sales price, to arrive at a cost of manufacture. Petitioner then uses this derived cost of manufacture to calculate constructed value, adding SG&A and profit at the statutory minimum rates of 10 percent and 8 percent, respectively. Petitioner notes that the resulting constructed value must exceed the hypothetical sales price, because the statutory minimums for SG&A and profit are greater than An Mau's actual SG&A and profit. Therefore, An Mau must have underreported its cost of manufacture.

Department's Position: By subtracting SG&A and profit for all pipe and tube from the hypothetical sales price, the petitioner arrived at an average COM for all pipe and tube, not, as its argument erroneously assumes, an average COM for the product under review. Additionally, petitioner's derived COM included significant movement expenses. Since petitioner's calculated COM is overstated, its calculated constructed value is also overstated. The Department has verified An Mau's cost of manufacture and is satisfied that it was accurately reported.

Comment 3: Petitioner maintains that An Mau's calculation of forming costs as

a component of An Mau's total factory overhead should include depreciation on forming machines not yet put into production, since An Mau took depreciation on those machines. An Mau argues that its exclusion of depreciation on the machines from its total factory overhead was based on the Department's practice of not including the depreciation on non-operational machines in its constructed value calculations.

Department's Position: We agree with the petitioner. The Department includes depreciation on non-operational machines in its constructed value calculations when such machines are related to the product under review. Only by doing so can we capture all costs related to the product. Furthermore, in this case the respondent depreciated the machines, indicating its recognition that a cost was being incurred during the period the machines were non-operational. Therefore, for these final results we included the depreciation expense in the fixed overhead component of cost of manufacture in our constructed value calculations.

Comment 4: Petitioner argues that the Department should not grant the duty drawback adjustment for respondents Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), Kao Hsing Chang Iron & Steel Corp. (KHC), and Far East Machinery Company, Ltd. (FEMCO) because the respondents failed to provide a reasonable link between the amount of duties paid and the amount rebated. As support for its argument, petitioner cites *Huffy Corp. v. United States*, 632 F. Supp. 50, 7 ITRD 2272 (CIT 1986), which requires a showing that: (1) "import duties are actually paid and rebated," and (2) there is a "sufficient link between cost to the manufacturer (import duties paid) and the claimed adjustment (rebate granted)."

The petitioner argues that there is an insufficient link between import duties paid and rebate received because the Taiwanese rebate program does not take into account: (1) Whether the imported coil can be used to make the exported product; or (2) the actual amount of duties per ton paid on the coil. The rebate is granted regardless of whether the size and grade of imported coil could have been used to produce the exported pipe. There is a great disparity in prices for various sizes, grades, and types of hot-rolled coil. Given the coil prices and drawback reported, the price of the coil used to produce the exported product must have been lower than the price for coil used in Taiwan's duty paying formula, or its scrap rate must have been unrealistic.

Department's Position: The Department extensively examined Taiwan's duty drawback system, as well as the duty drawback documentation for Yieh Hsing and FEMCO (KHC's records were not verified by the Department in this administrative review) in order to determine if import duties were paid and rebated, as well as whether a sufficient link between duties paid and rebated exists. Pertinent aspects of the Taiwanese duty drawback system were verified by the Department. On the basis of our examination of the Taiwanese duty drawback system, questionnaire responses, and verification, we conclude that respondents Yieh Hsing, KHC, and FEMCO have met the requirement that there is a sufficient link between duties paid and rebate granted.

The Department finds that the Taiwanese authorities' use of an average coil price (base prices obtained and average from coil usage patterns for the domestic industry as a whole) does not prevent the establishment of a link between import duties paid and drawback amounts received. By matching the duty drawback payments to the import licenses on which the claims are based, the Taiwanese authorities limit the amount of export rebates credited to a manufacturer by the amount of import duties actually paid by the same manufacturer. When the duty drawback paid to the manufacturer against a specific import license equals the duties shown on the license, no further drawback claim can be made against that import license. In this manner, the Taiwanese authorities ensure that the total amount of rebates received can never exceed the amount of actual import duties paid.

For the Department to grant a drawback claim, respondents must be able to demonstrate that they imported and paid duties on enough coil of the appropriate size, grade, and type to cover exports to the U.S. during the period of review. We verified that these conditions were met for Yieh Hsing and FEMCO.

Comment 5: Petitioner argues that if the duty drawback adjustment is granted it should be limited to the amount of duties paid for coil that has been matched by size, grade and type with the exported product. Respondents should have provided the Department with total tonnage of imports of coil that could have been used in standard pipe production, and the duties paid on that coil, so that the average duties paid per ton could have been calculated.

Department's Position: We agree that the duty drawback adjustment must be limited to the amount of duties paid on

coil appropriate for incorporation into the exported merchandise. Using documentation submitted by respondents, for the final results we calculated the duty drawback adjustment for each respondent based on actual duties paid on appropriate coil imports. The margins remain unchanged.

Comment 6: Petitioner argues that if the duty drawback adjustment is granted, then duty drawback received by the manufacturer should be allocated over all exports to the U.S. and third country markets. Otherwise, the petitioner argues, it would be possible for a foreign producer to eliminate its dumping margin on U.S. sales by targeting its total duty drawback to those sales.

Department's Position: It is not the Department's practice to require exporters to account for a sufficient amount of imported coil to cover all products under the review sold to third countries, as well as to the United States. In *Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan, Final Determination of Sales at Less Than Fair Value* (51 FR 37773, October 24, 1986), the Department deliberately limited the extent to which it investigated imports for duty drawback purposes. It excluded "products shipped to other countries" from its calculation of a total duty drawback amount to use for allocating duty drawback adjustments and stated that "we have limited the drawback used in our calculation to that applicable on shipments to the United States of the product under investigation."

Petitioner's argument is based on the premise that an adjustment for duty drawback should not be granted to the extent that imported inputs were not incorporated into the merchandise exported to the United States, even though imported inputs were sufficient to have accounted for all such exports. However, in *Steel Wire Rope From Korea, Final Determination of Sales at Not Less Than Fair Value* (48 FR 41616, September 16, 1983), the Department stated:

"... even if the Korean firms used domestic wire rod in the production of rope for export, there is evidence on the record of sufficient imports of high-carbon rod to more than account for all exports of wire rope. Under the principle of drawback substitution, this is sufficient to warrant an adjustment for the drawback of duties by the Korean government on exports of wire rope."

Also, see Department's response to Comment 4.

Comment 7: An Mau argues that it reported different packing costs for the period May-December 1985, and the period January-April 1986. An Mau

claims that, as a result of a clerical error, the Department used the same packing costs regardless of the date of shipment.

Department's Position: We have checked our computer program and found that the appropriate packing cost was used for each period.

Final Results of the Review

Based on our analysis of the data and the comments received, we determine that the following margins exist:

Manufacturer/ exporter	Time period	Margin (per- cent)
An Mau Steel Co., Ltd.	05/01/85-04/30/86	0.09
Far East Machinery Co., Ltd.	05/01/85-04/30/86	0
Kao Hsing Chang Iron & Steel Corp.	05/01/85-04/30/86	0
Yieh Hsing Enterprise Co., Ltd.	05/01/85-04/30/86	0

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Because there was either no margin, or a *de minimis* margin, for the reviewed manufacturers/exporters, the Department shall not require a cash deposit of estimated antidumping duties for those manufacturers/exporters.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1986, and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required.

These deposit requirements and waiver are effective for all shipments of certain Taiwan circular welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1)

of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Jan W. Mares,
Assistant Secretary for Import
Administration.

Date: October 12, 1988.

[FR Doc. 88-24291 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-DS-M

University of California et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-139. **Applicant:** University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. **Instrument:** Flashlamp System, Model 108-400. **Manufacturer:** Vertek Industries, Canada. **Intended Use:** See notice at 53 FR 15100, April 27, 1988. **Reasons for this decision:** The foreign articles provide a lamphead capable of operating at 150 kW with a nominal arc length of 150mm and a vortex-stabilized arc.

Docket Number: 88-180. **Applicant:** State University of New York at Buffalo, Buffalo, NY 14214. **Instrument:** Stainless Steel Chambers. **Manufacturer:** Technoscience, France. **Intended Use:** See 53 FR 20153, June 2, 1988. **Reasons For This Decision:** The foreign instrument provides a Comparque type supersonic nozzle yielding molecular beam intensities to 10^{21} molecules/steradian.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-24292 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 80517-8117]

Redesignation of Fourteen Federal Telecommunications Standards (FED-STD) as Federal Information Processing Standards (FIPS); Withdrawal of One Federal Telecommunications Standard**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.**ACTION:** Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the redesignation of fourteen computer-related telecommunications standards, which originally had been issued by the General Services Administration, as Federal Information Processing Standards (FIPS). Not included in this action are the Federal Telecommunications Standards (FED-STD) that have been issued for systems excepted under the provisions of section III(a)(3) of the Federal Property and Administrative Services Act of 1949 as amended.

Responsibility for the issuance of a group of computer-related telecommunications standards was transferred from the Administrator of General Services to the Secretary of Commerce by the Paperwork Reduction Reauthorization Act (Pub. L. 99-500) and was reaffirmed by the Computer Security Act of 1987 (Pub. L. 100-235).

This notice provides the new Federal Information Processing Standards Publication numbers for Federal Telecommunications Standards 1005A, 1006, 1007, 1008, 1015, 1020A, 1026, 1027, 1028, 1030A, 1031, 1033, 1062, and 1063. These standards have been redesignated as FIPS 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 147, and 148 respectively. FED-STD 1001/FIPS 37 has been withdrawn.

These actions are effective immediately upon publication of this Federal Register notice. The GSA-issued standards are considered withdrawn. GAS will make appropriate changes in the Federal Information Resources Management Regulations to reflect the redesignation of the Federal Telecommunications Standards as FIPS.

Federal Telecommunications Standard 1010, 1011, 1012, 1013, 1003A, and 1041 had already been issued as FIPS 16-1, 17-1, 18-1, 22-1, 71, and 100 respectively. These standards will keep their FIPS designations.

FOR FURTHER INFORMATION CONTACT: Shirley M. Radack, National Computer

and Telecommunications Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

SUPPLEMENTARY INFORMATION: An amendment to section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) authorizes the Secretary of Commerce to promulgate standards and guidelines developed by the National Institute of Standards and Technology for computer systems which have been defined to "mean any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information * * *."

Redesignation of Federal Telecommunications Standards As Federal Information Processing Standards

The Administrator of General Services previously was responsible for the development and promulgation of Federal Telecommunications Standards. To implement the transfer in responsibility for a group of computer-related telecommunications standards, fourteen Federal Telecommunications Standards, originally issued by GSA, have been reissued as Federal Information Processing Standards (FIPS).

The following Federal Telecommunications Standards which were issued under GSA's authority have been redesignated as Federal Information Processing Standards:

FIPS PUB 133, *Coding and Modulation Requirements for 2,400 Bit-Second Modems*, dated June 2, 1986. (Federal Standard 1005A)

FIPS PUB 134, *Coding and Modulation Requirements for 4800 Bit/Second Modems*, dated December 22, 1977. (Federal Standard 1006)

FIPS PUB 135, *Coding and Modulation Requirements for Duplex 9600 Bit/Second Modems*, dated March 1981. (Federal Standard 1007)

FIPS PUB 136, *Coding and Modulation Requirements for Duplex 600 and 1200 Bit/Second Modems*, dated June 16, 1980. (Federal Standard 1008)

FIPS PUB 137, *Analog to Digital Conversion of Voice by 2,400 Bit/Second Linear Predictive Coding*, dated November 28, 1984. (Federal Standard 1015)

FIPS PUB 138, *Electrical Characteristics of Balanced Voltage Digital Interface Circuits*, dated September 24, 1975. (Federal Standard 1020A)

FIPS PUB 139, *Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications*, dated August 3, 1983. (Federal Standard 1026)

FIPS PUB 140, *General Security Requirements for Equipment Using the Data Encryption Standard*, dated April 14, 1982. (Federal Standard 1027)

FIPS PUB 141, *Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment*, dated April 4, 1985. (Federal Standard 1028)

FIPS PUB 142, *Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits*, dated January 31, 1980. (Federal Standard 1030A)

FIPS PUB 143, *General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment*, dated June 10, 1985. (Federal Standard 1031)

FIPS PUB 144, *Data Communication Systems and Services and Service User-Oriented Performance Parameters*, dated May 28, 1985. (Federal Standard 1033). This standard adopts American National Standard (ANSI) X3.102-1983.

FIPS PUB 147, *Group 3 Facsimile Apparatus for Document Transmission*, dated August 19, 1981. (Federal Standard 1062)

FIPS PUB 148, *Procedures for Document Facsimile Transmission*, dated April 14, 1982. (Federal Standard 1063). This standard adopts Electronic Industries Association Standard RS-466.

The following Federal Information Processing Standards which were also issued as Federal Telecommunications Standards will keep their FIPS designations:

FIPS PUB 16-1, *Bit Sequencing of the Code for Information Interchange in Serial-By-Bit Transmission*, dated September 1, 1977. (Federal Standard 1010)

FIPS PUB 17-1, *Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange*, dated September 1, 1977. (Federal Standard 1011)

FIPS PUB 18-1, *Character Structure and Character Parity Sense for Parallel-By-Bit Data Communication in the Code for Information Interchange*, dated September 1, 1977. (Federal Standard 1012)

FIPS PUB 22-1, *Synchronous Signaling rates Between Data Terminal and Data Communication Equipment*, dated September 1, 1977. (Federal Standard 1013)

FIPS PUB 71, *Advanced Data Communication Control Procedures (ADCCP)*, dated May 14, 1980. (Federal Standard 1003A)

FIPS PUB 100, *Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Communications Networks*, dated July 6, 1983. (Joint FIPS/Federal Standard 1041)

Waiver Requirements

The following waiver procedures will apply to these standards. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Waivers shall be granted only when:

- Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

- Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve waivers only by a written decision which explains the basis upon which the agency head made the required findings(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the *Federal Register*.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such

deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Withdrawal of Standard

FIPS PUB 37, *Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communications Equipment*, dated June 15, 1975, (Federal Standard 1001) has been withdrawn. This standard adopted American National Standard (ANSI) X3.36-1975 which has been withdrawn.

Where To Obtain Copies

Copies of these publications are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to the Federal Information Processing Standards Publication number (FIPS PUB), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Ernest Ambler,
Director.

Date: October 13, 1988.

[FR Doc. 88-24215 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Commercial and Recreational Salmon Fisheries Amendment 9; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) will hold hearings to receive public comments on draft Amendment 9 to the "Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978." A draft environmental assessment, regulatory impact review/initial regulatory flexibility analysis, statement of consistency with coastal zone management programs, and review of other applicable law are incorporated in the document.

DATES: The hearings will be held November 2 and November 3, 1988. All hearings will begin at 7:00 p.m. Written comments must be received by

November 11, 1988, to assure Council consideration before adoption of the final amendment.

Persons unable to attend the hearings or meet the written comment deadline may present their testimony to the Council directly on November 18 in Portland, Oregon. At that time, the Council is expected to adopt the final amendment for implementation in time for the 1989 ocean salmon season.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" for the locations of the hearings. Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, 503-221-6352.

SUPPLEMENTARY INFORMATION: Draft Amendment 9 consists of the following issues: (1) Examines 3 alternatives to the current framework amendment escapement goal for Klamath River fall chinook; (2) examines 2 alternatives to the current framework amendment harvest allocation for commercial and recreational fisheries in the area north of Cape Falcon, Oregon; (3) examines the need to allow for more timely implementation of inseason Federal regulatory actions to increase management efficiency, eliminate regulatory confusion, and match identical state actions; (4) examines the need to conform Federal and State fishery management regulations with regard to the landing of steelhead in the ocean fishery; (5) examines the need to require inseason radio reports from commercial fishermen to the U.S. Coast Guard to provide timely accounting of catches and information on the movement of commercial fishing vessels; and (6) examines the need to correct, modify, or delete certain specific prohibitions on season opening and closing dates.

The hearings are scheduled as follows:

Wednesday, November 2, 1988

Redwood Acres Fairground, 3750 Harris Street, Eureka, California.

Astoria Middle School, Cafeteria, 1100 Klaskanine Avenue, Astoria, Oregon.

Thursday, November 3, 1988

Sawmill Restaurant, 3491 Broadway, North Bend, Oregon.

Seattle Airport Hilton, Alpine Room, 17620 Pacific Highway S., Seattle, Washington.

Holiday Inn-Airport, 245 S. Airport Boulevard, S. San Francisco, California.

For further information or copies of the draft amendment, contact the Council office at the address and telephone number provided above.

Dated: October 17, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-24335 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting on November 1, 1988, at 1 p.m., of the Mississippi/Louisiana Habitat Advisory Panel at the Holiday Inn—French Quarter, 124 Royal Street, New Orleans, LA, to discuss marsh management, the Mississippi River freshwater diversion structures, Louisiana's coastal hypoxia zone, Louisiana's Comprehensive Coastal Plan, Louisiana brine discharge, Louisiana offshore oil port anchoring zone violations, Barataria Bay, dredge material disposal problems in the Mississippi Sound, and butterfly fishing methods. The public meeting will recess at 5 p.m., reconvene on November 2 at 8:30 a.m., and will adjourn at 3 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Date: October 14, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-24334 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting on October 25, 1988, at 9 a.m., at the Sheraton Falmouth, 291 Jones Road, Falmouth, MA, to discuss fisheries enforcement issues and reports of the Groundfish and Swordfish Committees. The Lobster Committee will make a recommendation concerning adoption of Amendment #3 to the American Lobster Fishery Management Plan, and the Council will vote on the

matter at the meeting. There also will be an update on scallops, including progress on Amendment #3 to the Scallop Fishery Management Plan and recent developments in the fishery. The Council will hear reports by the Ad Hoc Committee on Council Work Priorities and from the Technical Monitoring Group. The public meeting will adjourn at approximately 5 p.m.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Date: October 14, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-24331 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Fishery Management Plan (FMP) Rewrite Oversight Group and the Council's Groundfish Select Group (GSG) will convene public meetings as follows:

Groundfish FMP Rewrite Oversight Group—will convene on November 1, 1988, at 8 a.m., at the Pacific Marine Fisheries Commission Conference Room, 2075 SW. First Avenue, Suite 1C, Portland, Or, to review progress on FMP Amendment 4 and to prepare a document for review by the Pacific Council at this November 16-18, 1988, meeting in Portland, OR. **Groundfish Select Group (GSG)**—will convene on November 2, 1988, at 8 a.m., at the Red Lion Inn-Portland Center, Pyramid Lake Room, 310, SW. Lincoln, Portland, OR, to continue development of alternative management and allocation strategies for the 1989 sablefish fisheries. Dr. Ellen Pikitch of the University of Washington will present the preliminary results of the fishing vessel observer program conducted off the Oregon coast during 1986-1987. Information from this study may aid the GSG in determining the incidental sablefish bycatch needs of the trawl fishing operations for other species. The GSG may also discuss management strategies for the 1989 yellowtail rockfish and widow rockfish fisheries.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue,

Suite 420, Portland, OR 97201; telephone: (503) 221-6352.

Date: October 14, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-24332 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting on November 1, 1988, at 1 p.m., at the Council's Headquarters (addressed below), of the Scientific and Statistical Committee to review the swordfish assessment and options for Amendment #1 to the Swordfish Fishery Management Plan (FMP). The Committee also will review Mackerel Amendments 3, 4, and 5, review the proposed Bluefish FMP, and also write a definition for overfishing. The public meeting will adjourn on November 3 at noon; a detailed agenda will be available to the public on or about October 18, 1988.

For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: October 14, 1988.

Richard H. Schaefer,

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

[FR Doc. 88-24333 Filed 10-19-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 25, Foreign Acquisition, and Related Clauses in Part 52.225; and OMB Control Number 0704-0229.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 3246 hours.

Frequency of Response: On occasion.

Number of Respondents: 32,453.

Annual Burden Hours: 18,927.

Annual Responses: 58,317.

Needs and Uses: Part 25 of the DoD FAR Supplement contains collection requirements related to Foreign Acquisition methods, including identification of expenditures in the U.S. by foreign contractors and submission of duty free entry certificates and source of petroleum products.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 14, 1988.

[FR Doc. 88-24227 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 37, Service Contracting, and Related Clauses in Part 52.237; DD Form 428; and OMB Control Number 0704-0231.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 2 hours and 15 minutes.

Frequency of Response: On occasion.

Number of Respondents: 29,071.

Annual Burden Hours: 72,677.

Annual Responses: 29,071.

Needs and Uses: The information is required to support the acquisition of various service contracts.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Respondents Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 14, 1988.

[FR Doc. 88-24228 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Advisory Committee Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for October 14, 1988 as published in the *Federal Register* (Vol. 53, No. 185, Page 37027, Friday, September 23, 1988, FR Doc. 88-21796) will be held on October 21, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 14, 1988.

[FR Doc. 88-24226 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Altered Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of an altered system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is altering a system of records subject to

the Privacy Act, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice November 21, 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 45848) 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

FR Doc 88-23229 (53 FR 39499) October 7, 1988

An altered system report, as required 5 U.S.C. 552a (o) of the Privacy Act was submitted on October 3, 1988, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 12, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer,

Department of Defense

October 14, 1988.

NO1754-1

System name:

Navy Family Support Program (51 FR 18121, May 16, 1986).

Changes:**System location:**

In line 2, change " * * Naval * * " to " * * Navy * * "

Categories of individuals covered by the system:

Delete the entire entry and substitute with the following: "Military service members and their dependents, retirees and their dependents, and spouses of POW's and MIA's and their eligible dependents. In certain overseas locations and certain remote CONUS locations, civilian DOD employees may be eligible for services."

Categories of records in the system:

In line 2, after the word " * * name, " add " * * SSN, * * "

Authority for maintenance of the system:

Delete the entire entry and substitute with: "10 U.S.C. 5031 and Executive Order 9397."

Purpose:

Delete lines 6 and 7 and substitute with: " * * intervention to those eligible."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**Storage:**

Delete the entire entry and substitute with the following: "Paper records are stored in file folders and automated records are stored on magnetic tapes and discs."

Retrievability:

Delete the entire entry and substitute with the following: "Records may be retrieved by the SSN or name of eligible person being served by the Family Service Center (FSC)."

Safeguards:

Delete the entire entry and substitute with the following: "Access is limited to professional FSC staff and as delegated by the FSC Director at each location on a need-to-know basis. Paper records are stored in locked file cabinets. Automated records may be controlled by limiting physical access to data entry terminals or use of passwords. Access to computer information, and tape and disc storage, is strictly controlled. Work areas are site-controlled during normal working hours. Building access is controlled and doors are locked during non-duty hours."

Retention and disposal:

Delete the entire entry and substitute with the following: "Paper records are retained for two years and then destroyed. Automated records are maintained for five years, then tapes/discs are erased."

System Manager(s) and address:

Delete the entire entry and substitute with the following: "For Navy activities, the Head, Family Services, Navy Family Support Program (NMPC-66), Naval Military Personnel Command, Washington, DC 20370.

For Marine Corps activities, the Head, Family Programs Branch (MHF), Headquarters, U.S. Marine Corps, Washington, DC 20380."

Notification Procedures:

In line 2, delete the word " * * Naval * * " and substitute with " * * Navy * * "

Record Source Categories:

Delete the entire entry and substitute with the following: "Information is normally obtained directly from the individual applying for counseling/assistance, however, there may be instances when the FSC counselor obtains information from mental health officials."

NO1754-1

SYSTEM NAME:

Navy Family Support Program.

SYSTEM LOCATION:

Navy Family Service Centers (FSC's) located at various Navy and Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military service members and their dependents, retirees and their dependents, and spouses of POW's and MIA's and their eligible dependents. In certain overseas locations and certain remote CONUS locations, civilian DOD employees may be eligible for services.

CATEGORIES OF RECORDS IN THE SYSTEM:

File could contain personal information such as name, SSN, case number, home address, telephone number, marriage counseling information, parent-child relationship information, family relations, financial data, and developmental disability information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5031 and Executive Order 9397.

PURPOSE(S):

The Family Service Centers (FSC's) offer information, conduct referral services, and directly deliver services for a wide array of personal and family matters, counseling, assistance and crisis intervention to those eligible.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records are stored in file folders and automated records are stored on magnetic tapes and discs.

RETRIEVABILITY:

Records may be retrieved by the SSN or name of eligible person being served by the FSC.

SAFEGUARDS:

Access is limited to professional FSC staff and as delegated by the FSC Director at each location on a need-to-know basis. Paper records are stored in locked file cabinets. Automated records may be controlled by limiting physical access to data entry terminals or use of passwords. Access to computer information, and tape and disc storage, is strictly controlled. Work areas are sought-controlled during normal working hours. Building access is controlled and doors are locked during non-duty hours.

RETENTION AND DISPOSAL:

Paper records are retained for two years and then destroyed. Automated records are maintained for five years, then tapes/discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

For Navy activities, the Head, Family Services, Navy Family Support Program (NMPC-66), Naval Military Personnel Command, Washington, DC 20370. For Marine Corps activities, the Head, Family Programs Branch (MHF), Headquarters, U.S. Marine Corps, Washington, DC 20380.

NOTIFICATION PROCEDURE:

Written requests may be addressed to the appropriate Navy/Marine Corps activity concerned (mailing addresses are listed in the Navy directory in the component systems notice). Individuals should provide proof of identity, full name, rank, dates of counseling, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Information is normally obtained directly from the individual applying for counseling/assistance, however, there may be instances when the FSC counselor obtains information from mental health officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-24229 Filed 10-19-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. QF88-537-000 et al.]

J-W Operating 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. J-W Operating Company

[QF88-537-000]

October 6, 1988.

On September 23, 1988, J-W Operating Company (Applicant), of 15508 Wright Brothers Dr., Addison, Texas 75224 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Selma, California. The facility will consist of three gas-fired engine generators. The electric power production capacity will be 693 kilowatts. The primary energy source will be biomass in the form of landfill gas. Construction of the facility is expected to begin in October 1988.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

2. Leathers, L.P.

[Docket No. QF88-543-000]

October 14, 1988.

On September 30, 1988, Leathers, L.P. (Applicant), of 342 West Sinclair Road, Calipatria, California 92233 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Niland Area of Imperial County, California. The facility consists of a dual-entry condensing steam turbine generator, steam separation vessels, switchyard, and related equipment. The estimated net electric power production capacity will be 34 megawatts. The primary energy source will be geothermal fluids. Fossil fuels will be used for startup and shutdown. The facility will be owned as a limited partnership, under the laws of California. Red Hill Geothermal, Inc. will be a general partner and have a 40 percent interest in Leathers, L.P. The Magma Power Company will be a limited partner and have a 10 percent interest in Leathers, L.P. The San Felipe Energy Company will be a general partner with a 40 percent interest and a limited partner with a 10 percent interest in Leathers, L.P. The San Felipe Energy Company is a subsidiary of the SCEcorp, an electric utility holding company.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

3. City of Piqua, Ohio v. Dayton Power and Light Co.

[Docket No. EL89-2-000]

October 14, 1988.

Take notice that on October 5, 1988, City of Piqua, Ohio (Piqua) tendered for filing, pursuant to section 202(b), 210, and 306 of the Federal Power Act, 16 U.S.C. 824a(b), 824i, and 825e, and Rules 204 and 206 of the Commission's Rules of Practice and Procedure, a Complaint against Dayton Power and Light Company (DP&L) and an order directing DP&L to permit Piqua, at its own expense, to establish a physical connection of DP&L's Sidney-Miami 138 KV line with Piqua's substation No. 5.

Comment date: November 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Public Service Authority, Central Electric Power Cooperative, Inc. and Mid-Carolina Electric Cooperative, Inc. (Petitioners) v. South Carolina Electric & Gas Co.

[Docket No. EL89-3-000]

October 14, 1988.

Take notice that on October 5, 1988, South Carolina Public Service Authority (Santee Cooper), Central Electric Power Cooperative, Inc. (Central) and Mid-Carolina Electric Cooperative, Inc. (Mid-Carolina) (collectively referred to as Petitioners) tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure and section 206 of the Federal Power Act, 16 U.S.C. 824e(a) (1982), a Petition for a Declaratory Order by the Commission finding that the collection of approximately \$4.2 million in late payments and interest from Santee Cooper by South Carolina Electric & Gas Company (SCE&G) is unjust and unreasonable under the applicable Tariff and Service Agreement.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company an Assumed business name of PacificCorp

[Docket No. ER89-8-000]

October 17, 1988.

Take notice that on October 7, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacificCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, Notices of Cancellation of Service Agreement Nos. 6 and 7 under Pacific's FERC Electric Tariff Original Volume No. 4 (Tariff), a new binder page to the Tariff and Revised Sheet Nos. 5,6,8,9,10,11,13 and 14 to the Tariff.

Pacific states that these Service Agreements have been terminated by mutual agreement or appropriate notice in accordance with the terms of the Service Agreements. The FERC Rate Schedule Designations are as follows:

FERC rate schedule number	Party
Service Agreement No. 6 under FERC Electric Tariff Original Volume No. 4 (Redesignation of Rate Schedule FERC No. 222).	Town of Basin, Wyoming.
Service Agreement No. 7 under FERC Electric Tariff Original Volume No. 4 (Supersedes Rate Schedule FPC No. 131).	Montana Light & Power Company.

Pacific requests waiver of Commission's notice requirements to permit the Basin Service Agreement to

terminate on April 5, 1988 and the Montana Service Agreement to terminate on February 1, 1988 which are the dates of termination of service.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Co.

[Docket No. ER89-9-000]

October 17, 1988.

Take notice that on October 4, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing, changes in rates for Rate Schedule FERC No. 77 for existing transmission services (firm transmission service and special facilities charges) by PG&E to the Department of Water Resources of the State of California (DWR). In addition, PG&E proposes to change Rate Schedule FERC No. 77, to include special facilities charges associated with a Facilities Agreement for the Installation and Operation of the Tie Lines for the North Bay Pumping Plants (Facilities Agreement) between PG&E and DWR, dated December 8, 1986.

The proposed changes in firm transmission and special facility charges are pursuant to sections II.4.2 and II.4.4 of Supplement No. 8 of Rate Schedule FERC No. 77. The Facilities Agreement provides for DWR to pay PG&E an annual special facilities charge for owning, operating, and maintaining the transmission lines that PG&E is designing and building in order to provide service to two new DWR pumping plants.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Co., an assumed business name of PacifiCorp

[Docket No. ER89-7-000]

October 17, 1988.

Take notice that on October 4, 1988, Pacific Gas and Electric Company (PacifiCorp), and assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, an August 11, 1988, Letter Agreement amending the Wholesale Power Purchase Agreement dated June 16, 1986, between Pacific and Montana-Dakota Utilities Company (MDU) designated as Service Agreement No. 9 under Pacific's FERC Electric Tariff, Original Volume No. 4 (Tariff)

and an August 16, 1988, Letter Agreement amending the Wholesale Power Purchase Agreement dated November 4, 1975, between Pacific and the Town of Deaver, Wyoming (Town) designated as Service Agreement No. 5 under the Tariff.

Pacific requests waiver of the Commission's notice requirements to permit the MDU Letter Agreement to become effective August 11, 1988 and the Town Letter Agreement to become effective August 16, 1988, these dates being consistent with the dates of execution.

Copies of the filing were served upon all parties hereto and the Wyoming Public Service Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Columbus Southern Power Co.

[Docket No. ER89-5-000]

October 17, 1988.

Take notice that on October 5, 1988, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Columbus Southern Power Company (CSP) (a) an Interconnection Agreement, dated January 1, 1989, between City of Columbus, Ohio (City) and CSP (1988 Agreement) and (b) Modification No. 1, dated September 1, 1988, between City and CSP. The 1988 Agreement replaces the present Agreement, dated June 1, 1983, as modified (1983 Agreement) between City and CSP. The modification No. 1 revises Service Schedule B—Emergency Service to the 1988 Agreement. The Commission has previously designated the 1983 Agreement as CSP's Rate Schedule FERC No. 33.

The 1988 Agreement incorporates the Firm Power, Transmission Service, Dump Energy, and Transfer Service Schedules provided in the 1983 Agreement and modified thereafter, which was accepted for filing by the Commission. The 1988 Agreement also provides for Emergency Service, Short Term Power, Limited Term Power, and Interchange Power Service Schedules which are reciprocal services. These reciprocal services are similar to those that other AEP affiliated system members have with other neighboring electric utility systems and have been accepted for filing by the Commission.

It is requested that the Commission permit this 1988 Agreement and Modification No. 1 to become effective October 1, 1986.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Canal Electric Co.

[Docket No. ER86-704-003]

October 17, 1988.

Take notice that on September 29, 1988, Canal Electric Company (Canal) tendered for filing its compliance refund report pursuant to the Commission's order issued August 2, 1988.

Copies of the tendered filing have been served by Canal upon the Massachusetts Attorney General, the Commission's Staff, the Town of Belmont and the Massachusetts Department of Public Utilities.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Co., an assumed business name of PacifiCorp

[Docket No. ER88-563-000]

October 17, 1988.

Take notice that on October 5, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with section 35 of the Commission's Regulations, a Certificate of Concurrence in the Exchange Agreement dated June 24, 1988 tendered for filing by the Colockum Transmission Company, Inc.

Copies of this filing have been supplied to the Colockum Transmission Company, Inc., Public Utility District No. 1 of Chelan County and the Washington Utilities and Transportation Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Co.

[Docket No. ER89-6-000]

October 17, 1988.

Take notice that on October 6, 1988, Arizona Public Service Company (APS or Company) tendered for filing a Letter Agreement (Agreement) supplementing the Contract for Interconnections and Transmission Service (APS-FPC Rate Schedule 33) between the United States of America—Department of Energy—Western Area Power Administration (WAPA) and APS. The Agreement provides for the short term coordination type sale of Supplemental Nuclear Coal fired energy between the hours of 11:00 pm and 7:00 am m.s.t. for the period October 1, 1988 through March 31, 1989. The tendered Agreement provides for varying energy amounts to be delivered over the aforementioned term of the Agreement.

No new facilities nor modifications to existing facilities are required to provide this aforementioned service.

A copy of this filing has been served upon WAPA and the Arizona Corporation Commission.

Comment date: October 31, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Fulton Cogeneration Associates

[Docket No. QF89-5-000]

October 14, 1988.

On October 7, 1988, Fulton Cogeneration Associates (Applicant) of Three City Square, Albany, New York 12207 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Nestle Foods Corporation plant in the City of Fulton, Oswego County, New York. The facility will consist of a combustion turbine generator, and a supplementary fired heat recovery steam generator (HRSG). Steam from the HRSG will be used in processing of chocolate products and for space heating at the production facility. The net electric power production capacity of the facility will be 45.769 MW. The primary source of energy will be natural gas #2 fuel oil as standby. Installation of the facility is scheduled to begin in February 1989.

Comment date: Thirty days from publication in the *Federal Register* 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. 88-24340 Filed 10-19-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. CP89-31-000 et al.]

Texas Gas Transmission Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Company

[Docket No. CP89-31-000]

October 12, 1988.

Take notice that on October 7, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-31-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to render standby service for those sales customers which elect to execute new sales service agreements under proposed Rate Schedules CDN or GN, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Texas Gas would permit sales customers served under Rate Schedules CDN or GN to obtain standby transportation service for up to 50 percent of their sales contract demand on any day and up to 50 percent of their seasonal D-2 entitlements during any season. The service is proposed to commence November 1, 1988, in order to replace the standby service rendered under Texas Gas Rate Schedule TSC which is said to expire October 31, 1988. The transportation rendered pursuant to this service would be conducted under Rate Schedule FT, it is stated.

Texas Gas states that the proposed Rate Schedules CDN and GN are, with two exceptions, similar to its existing sales rate schedules. The principal changes are said to be that standby service would be available solely to those customers executing new service agreements and that such service agreements would expressly waive all contract demand conversion and/or reduction rights other than those specifically enumerated therein.

It is stated that Texas Gas and any customer electing service under Rate Schedule CDN or GN would negotiate reductions in presently effective contract demand D-1 and D-2 levels on a mutually acceptable basis, and that once those initial contract demand D-1 and D-2 levels were established, the service agreements under both Rate Schedules CDN and GN would provide for specific conversion rights.

The rates for the sales service to be rendered under Rate Schedules CDN and GN would be the same as for the

sales service rendered under existing Rate Schedules CD, CDL, and G, it is stated.

Texas Gas is also proposing certain changes in Rate Schedule FT in order to give its customers flexibility under the standby service. Texas Gas claims that any transportation rendered under Rate Schedule FT within the SD-1 and SD-2 quantities nominated would be firm at the delivery point to the customer and that transportation service at receipt points would also be firm, subject to the customer's right to elect service under a receipt point reduction option.

Comment date: October 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation

[Docket No. CP89-22-000]

October 13, 1988.

Take notice that on October 6, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302 filed in Docket No. CP89-22-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizations to transport natural gas for the shippers in the following transactions, under its blanket authorization issued in Docket No. CP86-311-000 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.

CNG proposes to transport gas for the following shippers on an interruptible basis from the various receipt points on its system to various interconnections between CNG and certain local distribution companies (LDCs) and pipelines. The receipt and delivery points, along with maximum daily, average daily and annual volumes are shown as follows.

CNG states that it report these transactions, with commencement dates, to the Commission, as shown by the ST docket numbers which follow. CNG proposes to continue these services beyond the 120-day limit in accordance with §§ 284.221 and 284.223(b) of the Commission's Regulations.

CNG indicates that it commenced the transportation of natural gas for the indicated shippers on August 1, 1988, at the listed ST docket numbers, for a one hundred and twenty (120) day period ending November 29, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1)) and the blanket certificate issued to CNG in Docket No. CP86-311-000.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

PART 284, SUBPART G, TRANSPORTATION TRANSACTIONS FOR THE PERIOD, 8-01-88 THROUGH 8-31-88

Docket No.	Shipper Customer	Commence Date	Max. Daily DT Avg. Daily DT Est. Annual DTR	Receipt Point	LDC
ST88-5788	1. CNG Trading Company	8/04/88	15,000 1,200 5,475,000	D	North Penn
ST88-5792	2. Kogas, Inc.	8/27/88	100,000 2,769 36,500,000	B	H & B.
ST88-5791	3. Bishop Pipeline Corporation	8/12/88	10,000 1,286 3,650,000	D	NFG.
ST88-5790	4. Finch Pruyn & Company	8/13/88	9,300 1,053 3,394,500	B	NIMO.
ST88-5789	5. Brandywine, Industrial Gas, Inc.	8/31/88	3,000 95 1,095,000	D	NIMO.
ST88-5787	6. Clinton Gas Marketing, Inc.	8/01/88	9,700 1,806 3,540,500	B	PNG.
ST88-5786	7. The Resource Group	8/10/88	30,000 1,765 10,950,000	B	PNG.
ST88-5784	8. Owens-Illinois, Inc.	8/10/88	5,000 705 1,825,000	B	PNG.
ST88-5782	9. Owens-Illinois, Inc.	8/10/88	10,000 282 3,650,000	B	NIMO.
ST88-5785	10. Hadson Retail Services, Inc.	8/03/88	1,000 122 365,000	D	NIMO.

Legend of local distribution companies (LDC) or delivery points

HGI—Hope Gas, Inc.
 NYSEG—New York State Electric & Gas Corporation.
 RGE—Rochester Gas & Electric Corporation.
 EOG—East Ohio Gas Company.
 PNG—Peoples Natural Gas Company.
 NIMO—Niagara Mohawk Power Corporation.
 NFG—National Fuel Gas Supply Corporation.
 Transco—Transcontinental Gas Pipeline Corporation.
 Corgas—Corgas Pipeline Company (Intrastate).
 North Penn—North Penn Gas Company.
 H & B—Hanley & Bird.

Legend of receipt points

A—Various interconnects between Tennessee Gas Pipeline Company and CNG.
 B—Various receipt points in WV/PA/NY.
 C—Various interconnections between Texas Gas Transmission Corporation and CNG.
 D—Various interconnections between Texas Eastern Transmission Corporation and CNG.

3. CNG Transmission Corporation

[Docket No. CP88-871-000]

October 13, 1988.

Take notice that on September 29, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-871-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 78 miles of 20 inch pipeline from Benezette, Pennsylvania to Perulack, Pennsylvania to be known as TL-472, and 8,400 horsepower compressor station and related facilities at Ardell Station located near Benezette, Pennsylvania and 8.8 miles of 30 inch pipeline loop to be known as TL-474,

Extension in Westmoreland and Armstrong, Counties Pennsylvania and 12 miles of 30 inch pipeline loop to be known as TL-475 in Armstrong County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that the proposed facilities are necessary and integral in order for services to be performed in addition to the facilities proposed in its filing of August 23, 1988, in Docket No. CP88-712-000. CNG states that the application in Docket No. CP88-712-000 proposed construction and operation of 27 miles of 24 inch pipeline from Leesburg, Virginia to Virginia Natural Gas, Inc.'s (VNG) proposed 120 pipeline facilities near Prince William/Fauquier County Line, Virginia to be known as

TL-465, two compressor stations and related facilities, in order to make sales, transportation and interruptible storage of natural gas available to certain customers in Virginia, VNG; the City of Richmond, Virginia (Richmond); Hanover Energy Associates (NEA); and Virginia Electric and Power Company (VEPCO). CNG believes that the proposed facilities and services would provide significant benefits to VNG, Richmond, HEA, VEPCO, CNG, and their respective customers. It is alleged that the gas sales to VNG and Richmond detailed in Docket No. CP88-712-000 would provide an alternate supply source for both customers, as well as incremental supplies for potential growth in the Virginia market.

It is stated that the rates for the proposed gas sales services are cost-

based, FERC approved tariff rates, subject to the FERC's determination in CNG's settlement proceeding in Docket No. RP85-169-000, *et al.* It is further stated that as proposed, in the third full year of operations, volumes sold are more than those for which CNG currently has firm markets. However, CNG is currently negotiating contracts with customers to complete utilization of the pipeline. It is alleged that in the event interruptible transportation volumes are not enough to fully cover the remaining costs associated with the proposed facilities in the application, CNG would not allocate such costs to any existing customer or group of customers. It is asserted that the rates to be charged by CNG for rendering the proposed services are not unduly discriminatory and fully compensatory. CNG contends that its existing customer would not be required to subsidize the proposed service.

It is stated that the estimated total cost of the proposed facilities is \$76,157,650, inclusive of filing fees. The proposed facilities would be financed from funds to be obtained from CNG Transmission's parent, Consolidated Natural Gas Company, or from funds on hand.

Comment date: November 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP88-712-001]

October 13, 1988.

Take notice that on September 29, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88-712-001 an amendment to the application filed August 23, 1988, in Docket No. CP88-712-000, pursuant to section 7(c) of the Natural Gas Act, to replace the proposed 8,000 horsepower compressor station proposed for Doyleburg, Pennsylvania with two 4,390 horsepower compressor stations and related facilities in Doyleburg and Leesburg, Virginia, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that in the application filed on August 23, 1988, CNG proposed to construct and operate facilities and render long-term firm sales to Virginia Gas Company and the City of Richmond, Virginia and transportation and interruptible storage service to Hanover Energy Associates and Virginia Electric and Power Company. It is alleged that as a result of certain

settlements in the Northeast "Open Season" dockets, CNG is submitting facilities changes to implement the proposed sales in the August 23, 1988, application. CNG proposes to construct and operate a 4,390 horsepower compressor station and related facilities near Doyleburg and a 4,390 horsepower compressor station and related facilities near Leesburg. It is asserted that these two compressors would replace the proposed 8,000 horsepower compressor proposed for Doyleburg in the original application. It is alleged that the estimated cost of the two compressor stations is \$8,194,000 as compared with \$11,183,300 as originally filed.

Comment date: November 3, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-887-000]

October 13, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-887-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Oxy USA Inc. (Oxy), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, 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.

Northern proposes to transport on an interruptible basis up to 60,000 MMBtu of natural gas on a peak day and 21,900,000 MMBtu on an annual basis for Oxy. It is asserted that Northern would receive and deliver the gas at specified receipt and delivery points in Texas, Oklahoma, Iowa and Kansas. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88-5551.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-12-000]

October 13, 1988.

Take notice that on October 4, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-12-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport up to 25,000 dt of natural gas per day for Chevron, USA, Inc., under its blanket certificate issued in Docket No. CP88-328-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it proposes to transport on an interruptible basis, pursuant to a transportation agreement dated June 15, 1988, a maximum daily quantity of 25,000 dt. Transco further states the average day and annual quantities would be 18,000 dt and 7,000,000 dt, respectively. Transco proposes to receive the gas at Ship Shoal Block 107/108, offshore Louisiana and deliver the gas at Beauregard Parish, Louisiana. Further, Transco states that service commenced August 22, 1988, as reported in Docket No. ST88-5755, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP89-11-000]

October 13, 1988.

Take notice that on October 4, 1988, Williams Natural Gas Company (WNG), P.O. Box 3286, Tulsa, Oklahoma 74101, filed in Docket No. CP89-11-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by sale to Union Gas System, Inc. (Union) approximately 2.4 miles of 4-inch lateral pipeline and appurtenant facilities in Leavenworth County, Kansas, and the transportation of gas through said facilities under the blanket authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that WNG and Union have agreed the pipeline is more appropriately a part of Union's distribution system since there are currently fifteen of Union's domestic customers connected to the line. The

reclaim cost is estimated to be \$1,100, the salvage value \$12,622 and the sales price \$11,740.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Iberville Parish Police Jury, Applicant, Southern Natural Gas Company, Respondent

[Docket No. CP88-684-000]

October 13, 1988.

Take notice that on August 16, 1988, Iberville Parish Police Jury (Iberville), P.O. Box 389, Plaquemine, Louisiana 70764, filed in Docket No. CP88-684-000 an application as supplemented on September 16, 1988 and October 5, 1988, pursuant to section 7(a) of the Natural Gas Act for an order directing Respondent Southern Natural Gas Company (Southern) to establish a physical connection of its transportation facilities with Iberville's facilities and directing Southern to make sales of natural gas to Iberville for resale in the Bayou Sorrel to Pigeon area in Iberville Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Iberville states that it presently purchases gas from two intrastate pipeline companies, Monterey Pipeline Company and Acadian Gas Corporation which Iberville distributes to approximately 2,800 customers. Iberville states that it will construct new distribution facilities in order to serve approximately 500 households in the Bayou Sorrel to Pigeon area, Iberville Parish, Louisiana and requests that the Commission direct Southern to sell and deliver up to 200 Mcf per day (the estimated maximum day requirement in 1991) and to establish the necessary interconnection with Iberville in order for Southern to deliver such gas. It is stated that the estimated cost of the meter station to be constructed by Southern is \$103,000 which would be reimbursed by Iberville.

Iberville states the estimated total cost of the project is \$628,280 for which financing is yet to be determined; however, Iberville states that, if necessary, it could finance the project from cash reserves which are in excess of \$1,000,000. Further, Iberville proposes to commence construction in the first quarter of 1989 and to commence service in the second quarter of 1989.

Comment date: November 14, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-884-000]

October 14, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-884-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Fina Oil and Chemical Company (Fina), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000, 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.

Northern proposes to transport on an interruptible basis up to 30,000 MMBtu of natural gas on a peak day and 10,950,000 MMBtu on an annual basis for Fina. It is asserted that Northern would receive the gas at specified receipt points offshore Louisiana and offshore Texas, and deliver the gas at specified delivery points in Texas, offshore Texas, and offshore Louisiana. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88-5555.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-886-000]

October 14, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-886-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Excalibur Energy Corporation (Excalibur), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000, 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.

Northern proposes to transport on an interruptible basis up to 50,000 MMBtu

of natural gas on a peak day and 18,250,000 MMBtu on an annual basis for Excalibur. It is asserted that Northern would receive and deliver the gas at specified receipt and delivery points in Texas, Oklahoma, Kansas and New Mexico. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88-5554.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-889-000]

October 14, 1988.

Take notice that on September 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-889-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Panda Resources, Inc. (Panda), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000, 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.

Northern proposes to transport on an interruptible basis up to 500,000 MMBtu of natural gas on a peak day and 182,500,000 MMBtu on an annual basis for Panda. It is asserted that Northern would receive and deliver the gas at specified receipt and delivery points in Texas, Oklahoma, Nebraska, Iowa, Wisconsin, Minnesota, Michigan, South Dakota and New Mexico. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88-5558.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89-21-000]

October 14, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-21-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Rangeline Corporation (Rangeline), a marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated July 22, 1988, under Southern's Rate Schedule IT, it proposes to transport up to 500 MMBtu per day equivalent of natural gas on an interruptible basis for Rangeline from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service may involve interconnections between Southern and various transporters. Southern states that it would receive the gas at various existing points on its system offshore Louisiana, and in Louisiana, and that it would transport and redeliver the gas to an unspecified end user in South Carolina for Rangeline's account.

Southern advises that service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST88-5516. Southern further advises that it would transport 150 MMBtu on an average day and 54,750 MMBtu annually.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Southern Natural Gas Company

[Docket No. CP89-19-000]

October 14, 1988.

Take notice that on October 6, 1988, Southern Natural Gas Company, (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89-19-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Sonat Marketing Company (SMC), an affiliated marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Southern states that pursuant to a transportation agreement dated July 12, 1988, under Southern's Rate Schedule IT, it proposes to transport up to 755,650 MMBtu per day equivalent of natural gas on an interruptible basis for SMC from points of receipt listed in Exhibit "A" of the agreement to delivery points listed in Exhibit "B", which transportation service may involve interconnections between Southern and various transporters. Southern states that it would receive the gas at various existing points on its system offshore Louisiana, offshore Texas, Alabama, Mississippi, and Texas, and that it would transport and redeliver the gas to SMC at various points in Georgia.

Southern advises that service under § 284.223(a) commenced August 1, 1988, as reported in Docket No. ST88-5512. Southern further advises that it would transport 562,500 MMBtu on an average day and 205,312,500 MMBtu annually.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

14. Mojave Pipeline Company

[Docket Nos. CP89-1-000, CP89-2-000]

October 14, 1988.

Take notice that on October 3, 1988, Mojave Pipeline Company (Mojave), 1400 Smith, Houston, Texas 77002, filed in Docket Nos. CP89-1-000 and CP89-2-000 applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act, 15 U.S.C. 717f, and subparts E, F, and § 284.221 of the Federal Energy Regulatory Commission's Regulations thereunder for (A) an optional certificate of public convenience and necessity under Subpart E of Part 157 authorizing: (i) The construction and operation of facilities, (ii) the transportation of natural gas in interstate commerce, and (iii) conditional pregranted abandonment authority; and (B) a blanket certificate authorizing the construction and operation of facilities, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Mojave states that it is a General Partnership whose partners are Enron Mojave, Inc. and El Paso Mojave Pipeline Company.

It is further stated that Mojave does not have any present operations but would, upon the Commission's issuance of the optional expedited certificate of public convenience and necessity requested herein, be a natural gas company engaged in the transportation of natural gas in interstate commerce and would be subject to the

Commission's jurisdiction under the NGA.

Mojave proposes alternative authorization to construct one of three designs: Base Case, Alternative I, or Alternative II.

I. The Base Case would have a design capacity of 600 MMcf/d (expandable to 1,000 MMcf/d) and would consist of three segments. (i) The first segment would consist of an approximately 17 mile 24-inch diameter pipeline extending from a tap point on an existing pipeline owned by Transwestern Pipeline Company in Mojave County, Arizona, to a proposed compressor station located near Topock, Arizona, (Topock compressor station) and an interconnection facility from a tap point on an existing pipeline owned by El Paso Natural Gas Company immediately south of the proposed Topock compressor station. (ii) The second segment would consist of approximately 260.5 miles of 36-inch diameter pipeline and 65.0 miles of 30-inch diameter pipeline beginning at the proposed Topock compressor station and extending to the Bakersfield area in Kern County, California. (iii) The third segment would consist of approximately 45 miles of 26-inch diameter pipeline in Kern County, California. The proposed Topock compressor station would have 22,500 horsepower of installed compression.

II. Alternative I would have a design capacity of 400 MMcf/d expandable to 600 MMcf/d (and ultimately 1,000 MMcf/d). This alternative would have the same three segments as the Base Case but would have 11,500 horsepower of installed compression that could, in time, be increased to 22,500 horsepower to raise the design capacity to 600 MMcf/d.

III. Alternative II would have a design capacity of 400 MMcf/d, and would serve a market whose requirements would appear not to exceed 400 MMcf/d over the life of the project. This alternative would have the same three segments as the Base Case but would substitute a 30-inch pipeline for the 36-inch pipeline in the second segment, and would have 18,750 horsepower of installed compression at the Topock compressor station.

Mojave contends that the facilities proposed in this application(s) are identical to those which were the subject matter of a Final Environmental Impact Statement (FEIS), issued December 18, 1987, and supplemented on October 3, 1988. Therefore no further environmental analysis is required for the instant application(s). The FEIS as supplemented is herein adopted as

Staff's FEIS for Docket Nos. CP89-1-000 and CP89-2-000.

Mojave states that it seeks to make its rates competitive and has been willing to accept risks greater than those traditionally associated with interstate natural gas pipelines. Mojave states that its application provides for individual negotiations with the Enhanced Oil Recovery (EOR) shippers. Further, Mojave states that it puts both its return on and of equity at risk by allocating costs associated with return on and of equity to its commodity charge. Mojave states that it will "project finance" the pipeline thus reducing its rates to its shippers and ensuring that existing ratepayers of the affiliates of the Mojave partners will be insulated from any of the risks associated with the project.

Mojave emphasizes that its optional certificate application has been filed in the belief and on the condition that it will not prejudice or delay the proceedings in Mojave's conventional application in Docket No. CP85-437-000.

The subject filing includes the following:

(1) Mojave proposed financing which incorporates an initial capitalization ratio of approximately forty percent (40%) equity and sixty percent (60%) debt. This differs from Mojave's proposed financing in Docket No. CP85-437-000 in which Mojave proposes thirty percent (30%) equity and seventy percent (70%) debt. The equity portion will be contributed in equal shares by the two Mojave partners. Mojave anticipates that the debt component would be "project financed," i.e., secured by the revenues generated by the project under service agreements with the shippers.

(2) Mojave states that it would not buy or sell any gas. Mojave proposes transportation to be provided on a firm basis pursuant to proposed Rate Schedule FT-1 and on an interruptible basis pursuant to its proposed Rate Schedule IT-1 for contract shippers who have acquired title to the gas at or upstream of Topock. Mojave expects its service to be provided primarily to the heavy oil fields in Kern County, California; however, it proposes to provide transportation on an open access basis.

(3) Mojave proposes that priority of service within each class of service of its tariff would be determined on a "first come first served" basis. Mojave proposes an "open season" which commences upon publication in the Federal Register of notice of filing of this application and concludes thirty (30) days prior to the date of closing of financial arrangements for the construction of the pipeline. Mojave

states it will publish a notice in industry publications of general circulation at least 45 days prior to the close of the request period.

(4) Mojave states it proposes a one part volumetric rate; however, Mojave also states its proposed tariff enables Mojave and its shippers to negotiate a two part rate for firm service consisting of a reservation fee and a transportation charge to be paid per unit of gas transported. Mojave states that these rates shall not be greater than the maximum rates or less than the minimum rates set forth in Mojave's tariff which are presented on a MMBtu basis as follows:

Case	Volumetric rate		Maximum reservation fee
	Max	Min	
Base Case	38.91¢	1.00¢	17.71¢
Alternative I	48.45¢	1.00¢	22.11¢
Alternative II	49.25¢	1.00¢	22.72¢

Mojave states that it has derived its proposed rates based upon a 95% load factor. Further Mojave states it has excluded both return on and return of equity from the calculation of its maximum reservation fee. Mojave also states it has complied with WyCal order in which the Commission limited recovery of costs through the demand charge to the debt-equity ratios of the 10 largest interstate pipelines. Mojave calculates its rates based on a 20-year straight line depreciation live, rather than the 25 years set by the Commission in the WyCal order. However, Mojave's proposal also seeks authority for flexibility to negotiate other forms of rates, including levelized rates, with any shipper desiring such rate. Mojave states its rates are not mileage-based nor differentiated between peaks and off-peak period.

(5) Mojave states its application proposes an 18% ceiling rate of return on equity (ROE) which would permit Mojave to negotiate contracts with shippers that might yield a maximum ROE of 18%. Mojave does not ask the Commission to guarantee any level of return; instead, Mojave urges the Commission to establish a ceiling ROE that will not impede Mojave's ability to negotiate with and serve the EOR shippers while ensuring that Mojave is adequately compensated for its risk.

(6) Mojave states that its application set its maximum rate for interruptible service using the maximum total 100% load factor rate for firm service to be charged on a volumetric basis.

Comment date: October 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Natural Gas Pipeline Company of America

[Docket No. CP89-51-000]

October 14, 1988.

Take notice that on October 13, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-51-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Arco Oil and Gas Company, a Division of Atlantic Richfield Company (Arco), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 80,000 MMBtu of natural gas equivalent per day, plus additional quantities of overrun gas, on behalf of Arco pursuant to a transportation agreement dated June 28, 1988, between Natural and Arco. Natural would receive gas at various existing points of receipt on its system in Iowa, Louisiana, offshore Louisiana, Texas, offshore Texas, New Mexico and Oklahoma and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at an existing point of delivery in Texas.

Natural further states that the estimated average daily and annual quantities would be 80,000 MMBtu and 29,200,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 1, 1988, as reported in Docket No. ST89-148, it is stated.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP89-37-000]

October 14, 1988.

Take notice that on October 11, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-37-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Williams Gas Marketing Company (Williams), a marketer of natural gas, under Natural's blanket

certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas equivalent per day, plus additional quantities of overrun gas, on behalf of Williams pursuant to a transportation agreement dated June 8, 1988, as amended on July 18, 1988, and August 2, 1988, between Natural and Williams. Natural would receive gas at various existing points of receipt on its system in Louisiana, offshore Louisiana, Texas, offshore Texas, Illinois, Oklahoma, Missouri, New Mexico, Kansas, Nebraska, Iowa and Arkansas and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at various existing points of delivery in Louisiana, Colorado, Illinois, New Mexico and Oklahoma.

Natural further states that the estimated average daily and annual quantities would be 50,000 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 5, 1988, as reported in Docket No. ST89-131, it is stated.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

17. Tennessee Gas Pipeline Company

[Docket No. CP88-856-000]

October 14, 1988.

Take notice that on September 27, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-856-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Diamond Shamrock Natural Gas Marketing Company (Diamond Shamrock), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Diamond Shamrock from various receipt points located offshore Louisiana, offshore Texas, Louisiana, Texas, Alabama, New York and Mississippi to specified delivery points in multiple States.

Tennessee indicates that the transportation service for Diamond Shamrock initially started August 19, 1988, pursuant to the self-implementing provision of § 284.223, as reported in

Docket No. ST88-5678. Further, Tennessee states that the peak day quantities would be 220,000 dekatherms, the average daily quantities would be 100 dekatherms, and the annual quantities would be 36,500 dekatherms.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

18. Natural Gas Pipeline Company of America

[Docket No. CP88-882-000]

October 14, 1988.

Take notice that on September 30, 1988, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-882-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Apache Marketing, Inc. (Apache), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, 20,000 MMBtu on an average day, and 7,300,000 MMBtu on an annual basis for Apache. It is stated that Natural would receive the gas for Apache's account at various existing receipt points in Oklahoma, Texas, offshore Texas, Louisiana, offshore Louisiana and Illinois. Natural proposes to redeliver equivalent volumes of gas in Illinois, Iowa and Texas. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced August 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST88-5878.

Comment date: November 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

19. Tennessee Gas Pipeline Company

[Docket No. CP88-870-000]

October 17, 1988.

Take notice that on September 29, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP88-870-000 a request under section 7 of the Natural Gas Act for a certificate of public convenience and necessity

authorizing firm sales service to Piedmont Natural Gas Company, Inc., Nashville Gas Division (Nashville), under Tennessee's Rate Schedule CD-1, and permitting and approving abandonment of service, effective February 1, 1988, to Nashville under Tennessee's Rate Schedules G-1 and GS-1, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that under a March 30, 1988 letter-agreement Tennessee and Nashville have agreed to combine G and GS sales service under a single contract and to revise Tennessee's services to Nashville to more accurately reflect Nashville's current requirements. Tennessee specifically proposes to (1) provide firm sales service to Nashville under Rate Schedule CD-1 and a gas sales contract dated February 1, 1998 for a contracted demand quantity of 130,000 dt equivalent of natural gas and an annual quantity of 27,046,500 dt equivalent of natural gas, (2) abandon its Rate Schedule G-1 and GS-1 service to Nashville and (3) provide a firm transportation service for Nashville under Rate Schedule FT-A up to a maximum daily quantity of 10,000 dt equivalent of natural gas.

Tennessee states that the new CD sales service to be rendered by Tennessee for Nashville would not be an "eligible firm sales agreement" within the meaning of Section 284.10 of the Commission's Regulations. However, Tennessee proposes to provide limited opportunities for Nashville to convert its firm sales entitlement to firm sales service or reduce its sales entitlement.

Comment date: November 7, 1988, in accordance with Standard Paragraph F at the end of this notice.

20. Pacific Atlantic Marketing, Inc.

[Docket No. CI89-7-000]

October 17, 1988.

Take notice that on October 6, 1988, Pacific Atlantic Marketing, Inc. (PAMI) of P.O. Box 1188, Houston, Texas 77251-1188, 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: November 2, 1988, in accordance with Standard Paragraph J 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.

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.

Standard Paragraph

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, 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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24341 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-31-000]

BASF Corp. and Samson Resources Co.; Complaint

October 17, 1988.

On September 21, 1988, BASF Corporation, Complaint (BASF) filed a complaint under Rule 206 of the Commission's rules of practice and procedure¹ against Samson Resources Company, respondent (Samson) for knowingly and willfully violating the Natural Gas Policy Act of 1978 (NGPA) by collecting amounts in excess of the maximum lawful price for gas from the Leggett Field in Polk County, Texas.

BASF states that Samson was the seller of natural gas to it pursuant to an August 26, 1974 gas purchase agreement between Samson and its predecessors. BASF further states that between June 1, 1981, and December 31, 1984, it bought processed gas from Samson at or near the wellhead and paid the NGPA section 102 price based on Samson's representations that the gas was subject to pricing under section 102. BASF asserts that the existing contract price on the date of the enactment of the NGPA was the maximum lawful price under section 105(b)(1) since it was lower than the section 102 price and that such contract price is the proper regulated price.

¹ 18 CFR 385.206 (1988).

BASF alleges that the gas purchased was not flowing from a qualified section 102 well and, therefore, the compensation received by Samson for the gas exceeded the maximum lawful price under the NGPA. BASF further alleges that Samson has overcollected approximately \$2,047,677.00 and that when interest through August 31, 1988, is computed in accordance with 18 CFR section 154.102(c) and added to that figure, the total refund owed exceeds \$3,543,384.00.

BASF requests that the Commission initiate a show cause proceeding, find that Samson has violated section 504 of the NGPA and the Commission's regulations issued thereunder, order Samson to refund to BASF all revenues collected in violation of the NGPA, together with interest, and order such penalties as provided in NGPA section 504.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 30 days following publication of this notice in the Federal Register. Protests will be considered by the Commission in determining 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 within 30 days following Federal Register publication.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24337 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-535-000]

Iowa Public Service Co.; Filing

October 14, 1988.

Take notice that on September 19, 1988, Iowa Public Service Company (IPS) tendered for filing its First Amendment containing additional documentation for an executed Letter Agreement dated June 23, 1988, whereby IPS will supply Kansas City Power & Light Company (KCP&L) with 10 MW of short-term power commencing June 20, 1988 and continuing through September 3, 1988. This First Amendment contains

energy price and cost data requested by the FERC Staff.

IPS requests an effective date of June 20, 1988, and therefore requests a waiver of the Commission's notice requirements.

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, 385.214). All such motions or protests should be filed on or before October 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24338 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-608-000]

Wisconsin Electric Power Co.; Filing

October 14, 1988.

Take notice that on September 15, 1988, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a letter agreement between itself and Shawano Municipal Utilities (Shawano). The agreement provides for an interim sale by Wisconsin Electric of 3.5 MW of non-firm power at Shawano's Lincoln Substation until planned transmission improvements are effected. The service provided will allow an industrial customer of Shawano to economically operate during on-peak hours. The non-firm rate will be equivalent to Wisconsin Electric's wholesale interruptible rate.

Wisconsin Electric requests that the Commission waive the sixty-day notice requirements of its Regulations in order to allow the effective date of September 1, 1988. Wisconsin Electric states that Shawano joins in the requested effective date.

Copies of the filing have been served on Shawano and the Public Service Commission of Wisconsin.

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, 385.214). All such motions or protests should be filed on or before October 24, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24339 Filed 10-19-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3465-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 1987 Sewage Sludge Use and Disposal Survey. (EPA ICR # 1393).

Abstract: EPA is surveying municipal sewage treatment plants on sludge generation and treatment processes; existing sludge use, disposal practices and costs; and alternative use and disposal practices. The information will be used to develop sludge use and disposal regulations.

Burden Statement: The estimated average burden is 16 hours for a small plant and 32 hours for a large plant. This includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the questionnaire.

Respondents: Municipal sewage treatment plants.

Estimated No. of Respondents: 479.

Estimated Total Annual Burden on Respondents: 9,824 hours.

Frequency of Collection: One-time only.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW, Washington, DC 20460 and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW, Washington, DC 20503, (Telephone (202) 395-3084)

OMB Responses To Agency PRA Clearance Requests

EPA ICR #1056; Information Collection Requirements For NSPS Subpart G Citric Acid Plants; was approved 9/16/88; OMB # 2060-0019; expires: 9/30/91.

EPA ICR #0583; Records of PCB Use, Storage and Disposal; was approved 9/21/88; OMB #2070-0061; expires: 9/30/91.

EPA ICR #1391; State Revolving Funds Programs; was approved 9/22/88; OMB # 2040-0118; expires: 9/30/91.

EPA ICR #1438; Worker Protection Standards For Agricultural Pesticides; was disapproved on 9/19/88.

EPA ICR #1080.04; NESHAP For Benzene Emissions—Reporting And Recordkeeping Requirements; was disapproved on 9/16/88.

Date: October 4, 1988.

Paul Lapsley,

Director Information and Regulatory Systems Division.

[FR Doc. 88-24350 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3465-2]

California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of scope of waiver of Federal preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has amended the California emissions standards and test procedures for heavy-duty gasoline engines and vehicles to establish a nonconformance

penalty (NCP) program for the 1988 model year. EPA finds that these amendments are within the scope of previous waivers of Federal preemption granted to California for its heavy-duty emission standards and test procedures.

DATE: Any objection to the findings in this notice must be filed by November 21, 1988. Upon the receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent Federal Register notice.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of the California amendment at issue in this notice, a decision document containing an explanation of EPA's determination, and documents used in arriving at this determination, are available for public inspection during normal working hours (8:00 a.m. to 3:00 p.m.) at the Environmental Protection Agency, Central Docket Section (Docket EN-88-04), South Conference Center, 401 M Street, SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. Joan S. Baxter as noted below.

FOR FURTHER INFORMATION CONTACT: Joan S. Baxter, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2514.

SUPPLEMENTARY INFORMATION: EPA has determined that CARB's amendments are within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended (Act).¹ CARB's changes incorporate into the California heavy-duty gasoline engine and vehicle regulations provisions which are essentially the same as the Federal NCP provisions which were promulgated by EPA and which are contained in Subpart L of 40 CFR Part 86.²

The California NCP program will be available for the 1988 model year heavy-duty gasoline engines and vehicles only. The program will not apply to heavy-duty diesel engines and vehicles or to 1989 and later model year heavy-duty gasoline engines and vehicles. The amendments make NCPs available in

California for the 1.1 gram per brake horse-power-hour (g/bhp-hr) hydrocarbon and the 14.4 g/bhp-hr carbon monoxide standards applicable to 1988 model year heavy-duty gasoline engines intended for use in vehicles rated up to 14,000 pounds [Gross Vehicle Weight Rating (GVWR)]. The amendments incorporate provisions essentially identical to the Federal penalty rates and the Federal Production Compliance Audit (PCA) sampling plan and test procedures.

California Assembly Bill 3683 (July 24, 1986) authorized CARB to adopt a schedule of nonconformance fees designed to substitute for the payment of nonconformance fees to the Federal government applicable to manufacturers of new heavy-duty vehicles and engines. Bill 3683 required that CARB establish nonconformance fees only for those heavy-duty vehicles or engines for which it has adopted emission standards and test procedures which are identical to the corresponding Federal emission standards and test procedures. Bill 3683 required that EPA agree to waive collection of the NCP based on California's collection of an identical amount. Bill 3683 also required that it be established that this agreement had been reached prior to the implementation of the California NCP program.

On December 8, 1986, the Executive Director of CARB requested that EPA assist California by promulgating a rule waiving Federal collection of a portion of the NCP equal to the amount that California would collect under the California NCP program.

On May 26, 1988, EPA promulgated a final rule revising the regulations to include a provision which would waive payment of penalties to EPA for those heavy-duty vehicles and engines which are certified under the Federal NCP process and are titled, registered or principally used in the State of California under a California NCP program.³

In comments to the proposed rulemaking to permit EPA to waive a portion of its Federal NCP payment,⁴ Cummins Motor Company (Cummins) claimed that EPA should not grant a waiver of Federal preemption under section 209(b) of the Clean Air Act for CARB's NCP program unless EPA and California standards and procedures are identical in every respect.⁵ Cummins'

reasoning was based, in part, upon its interpretation of the proposed language of the regulations which stated that: "a waiver of preemption would be applicable only if the Administrator finds that: (A) California has adopted emission standards and test procedures * * * which are identical to the corresponding Federal emission standards and test procedures for which NCPs are available." Cummins interprets this language to require that all California and Federal standards for a heavy-duty vehicle or engine eligible for NCPs must be aligned for the Administrator to approve a 209(b) waiver. This interpretation is incorrect. The intent of this section of the proposed rule is to limit those pollutants for which California can offer NCPs to the pollutants for which the Federal and California emission standards and test procedures are identical.

In any event, EPA believes that Cummins is incorrect in its interpretation for the criteria of granting a 209(b) waiver. As discussed in EPA's decision document, EPA believes that CARB's waiver request falls within the scope of waivers previously granted to CARB under the criteria established by EPA pursuant to section 209(b). The issue raised by Cummins is irrelevant to the criteria which EPA may consider in making such a determination.

EPA has determined that these changes do not undermine California's determination that its standards are, in the aggregate, at least as protective as Federal standards. Further, EPA has found that the amendments do not cause any inconsistency with section 202(a) of the Act and raise no new issues regarding previous waivers. A full explanation of EPA's determination is contained in a decision document, which may be obtained from EPA as noted above.

Since these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of the date of publication of this notice, EPA will consider holding a public hearing to provide an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings.

¹ 53 FR 19130 (May 26, 1988).

² 53 FR 1716 (January 21, 1988).

³ For the 1988 and 1989 model years, the only difference between the Federal and California standards for heavy-duty vehicles engines is for oxides of nitrogen (NOx). The Federal NOx

standard is 10.7 grams per brake horsepower hour (g/BHP-hr) and the California NOx standard is 6.0 g/BHP-hr for these years. Beginning in 1990 and for later model years the Federal and California NOx standard will be the same.

⁴ 42 FR 31639 (June 22, 1977); 43 FR 20549 (May 12, 1978); 43 FR 36679 (August 16, 1978); 46 FR 36742 (July 15, 1981); and 49 FR 39731 (October 10, 1984).

⁵ 50 FR 35374 (August 30, 1985) and 50 FR 53454 (December 31, 1985).

EPA's decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, EPA hereby determines and finds that this decision is of nationwide scope and effect.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291, for this "within the scope" determination since it is not a rule.

This action also is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) *et seq.* because the action is not required to undergo prior "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Date: October 12, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-24349 Filed 10-19-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-506; FRL-3465-7]

Pesticide Tolerance Petitions; Mobay Corp. et al.

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (TS-787C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential

Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-2386.	-Do-
Lois Rossi (PM 21).	Rm. 227, CM #2, 703-557-1900.	-Do-
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	-Do-

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3683*. Mobay Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120, proposes to amend 40 CFR 180.332 by establishing a regulation to permit the residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites in or on alfalfa, seed at 0.1 part per million (ppm), alfalfa chaff at 1.0 ppm, asparagus at 0.1 ppm, barley, forage at 2.0 ppm, barley, hay at 7.0 ppm, corn, silage at 0.1 ppm, corn, fresh, cannery waste at 0.1 ppm, pea, straw at 4.0 ppm, and wheat, hay at 7.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 25).

2. *PP 8F3684*. Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06525,

proposes to amend 40 CFR 180.246 by establishing a regulation to permit the residues of the plant growth regulator daminozide (butanedioic acid mono 2,2-dimethylhydrazide) in or on apples at 20 ppm. The proposed analytical method for determining residues is gas chromatography-mass spectrometry. (PM 25).

3. *PP 8F3689*. Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by establishing a regulation to permit the residues of the fungicide aluminum tris (O-ethyl phosphonate) in or on pome fruit at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21).

4. *FAP 8H5563*. Mobay Corp., Agricultural Chemicals Div., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.250 and 186.250 by establishing a regulation to permit the residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites in or on tomato, processed products at 0.2 ppm and sugarcane, molasses at 2.0 ppm. (PM 25).

5. *FAP 8H5565*. Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, proposes to amend 40 CFR Part 185 and 40 CFR 186.425 by establishing a regulation to permit the residues of the insecticide clofentezine, 3,5-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on raisin waste at 3.0 ppm, grape pomace (dry) at 1.5 ppm, milk at 0.01 ppm, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm. (PM 12).

6. *FAP 8H5566*. BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR Part 185 by establishing a regulation to permit the residues of the fungicide 3-(3,5-dichloro-phenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on tomato paste at 6.0 ppm. (PM 21).

7. *FAP 8H5567*. Rhone Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27790, proposes to amend 40 CFR Parts 185 and 186 by establishing a regulation to permit the residues of the fungicide aluminum tris (O-ethyl phosphonate) in or on pome fruit juice at 12 ppm and pome fruit pomace (wet and dry) at 12 ppm. (PM 21).

Authority: 7 U.S.C. 138a.

Dated: October 12, 1988.

Edwin F. Tinsworth,
Acting Director, Registration Division, Office
of Pesticide Programs.
[FR Doc. 88-24343 Filed 10-19-88; 8:45 am]
BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

FOR FURTHER INFORMATION CONTACT:

Jo-Ann Henry, Director, Personnel Management Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507 202/634-7001.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), Chapter 43 Title 5, U.S.C., membership of the SES Performance Review Board is as follows: Thomasina Rogers, Deputy Legal Counsel, Equal Employment Opportunity Commission (Chairperson); Joseph Vasquez, Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation; Ernest Russell, Director of Administration, National Labor Relations Board; Lois Hartman (Alternate), Deputy Director of Personnel, Agency for International Development. Signed at Washington, DC on this 12th day of October, 1988.

For the Commission.

Clarence Thomas,
Chairman.

[FR Doc. 88-24352 Filed 10-19-88; 8:45 am]
BILLING CODE 6570-06-M

FEDERAL HOME LOAN BANK BOARD

Financial Security Savings and Loan Association, Delray Beach, FL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Financial Security Savings and Loan Association, Delray Beach, Florida, on October 6, 1988.

Dated: October 7, 1988.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-24274 Filed 10-19-88; 8:45 am]
BILLING CODE 6720-01-M

Liberty Federal Savings Bank, Raton, NM; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Liberty Federal Savings Bank, Raton, New Mexico on October 7, 1988.

Dated: October 7, 1988.

John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-24276 Filed 10-19-88; 8:45 am]
BILLING CODE 6720-01-M

Peoples Savings and Loan Association, La Grande, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Peoples Savings and Loan Association, La Grande, Oregon, on September 23, 1988.

Dated: September 26, 1988.

By the Federal Home Loan Bank Board.
John M. Buckley, Jr.,
Secretary.
[FR Doc. 88-24275 Filed 10-19-88; 8:45 am]
BILLING CODE 6720-01-M

Regency Savings Bank, FSB, Ann Arbor, MI; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Regency Savings Bank, FSB, Ann Arbor, Michigan on October 13, 1988.

Dated: October 17, 1988.

John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-24277 Filed 10-19-88; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-743; FHLBB No. 5284]

Wisconsin Savings Association, Tomah, WI; Final Action; Approval of Conversion Application

Dated: October 12, 1988.

Notice is hereby given that on October 6, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Wisconsin Savings Association, Tomah, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-24278 Filed 10-19-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-004.

Title: Port of New Orleans Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans Coastal Cargo Company.

Synopsis: The agreement cancels sections of the leased premises and proportionally reduces rent payable in accordance with an option provided in the basic agreement.

Agreement No.: 224-200161.

Title: New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (PA) Atlantic Container Line (ACL).

Synopsis: The proposed agreement provides for PA to make payments to ACL of \$25 per import and \$50 per export container loaded to or unloaded from ACL vessels at a marine terminal in the Port of New York and New Jersey.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: October 14, 1988.

[FR Doc. 88-24308 Filed 10-19-88; 8:45 am]

BILLING CODE 5730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0112, State Agency Donation Report of Surplus Personal Property. This report complies with Pub. L. 94-519 which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as: conservation, economic development, education, parks and recreation, public health, and public safety.

AGENCY: Property Management Division (FBP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 16th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 55; responses, 4 per year; average hours per response, 1; burden hours, 220.

FOR FURTHER INFORMATION CONTACT:
Audrey L. Harris, 703-557-1234.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: October 13, 1988.

Mary L. Cunningham,
Acting Director, Information Management
Division (CAI).

[FR Doc. 88-24308 Filed 10-19-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service; Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95-454, required that the appointment of Performance Review Board members be published in the Federal Register.

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Duane F. Alexander, M.D.
Joseph R. Antos, Ph.D.
Michele W. Applegate
William H. Aspdon, Jr.
Joseph H. Aultry, III, M.D.
Gerald L. Barkdoll
Paul D. Barnes
James S. Benson
Joyce T. Berry, Ph.D.
Katherine L. Bick, Ph.D.
Lyle W. Bivens, Ph.D.
Annette H. Blum
Windell R. Bradford
Eileen Bradley
Kathleen A. Buto
Hugh C. Cannon
Ronald H. Carlson
Bruce A. Chabner, M.D.
Vivian Chang, M.D.
Philip S. Chen, Jr., Ph.D.
Winston M. Cobb
Glenda S. Cowart
Don J. Davis
John L. Decker, M.D.
Frank L. Dell'Acqua
Vincent T. DeVita, Jr., M.D.
Walter R. Dowdle, Ph.D.
John C. Eberhart, Ph.D.
Gunther Eichhorn, Ph.D.
Jo Eleanor Elliott
William L. Engles
Anthony S. Fauci, M.D.
Dennis J. Fischer
William T. Friedewald, M.D.
Florence B. Fiori, Ph.D.
Barbara J. Gagel
George J. Galasso, Ph.D.
John T. Gallin, M.D.
Donald E. Goldstone, M.D.
Murray Goldstein, M.D.

Phillip Gorden, M.D.
Carolyn Doppelt Gray
Jerome G. Green, M.D.
Joseph A. Gribbin
Gerald B. Guest, D.V.M.
George E. Hardy, Jr.
Louis B. Hays
Ada Sue Hinshaw, Ph.D.
George R. Holland
Robert A. Israel
Barry L. Johnson, Ph.D.
Lewis L. Judd, M.D.
John H. Kelso
Eugene Kinlaw
Jin H. Kinoshita, Ph.D.
Ruth L. Kirschstein, M.D.
Irwin J. Kopin, Ph.D.
Jeffrey P. Koplan, M.D.
Carl Kupfer, M.D.
Richard P. Kussertow
James D. Lawrence
Claude J. Lenfant, M.D.
Joseph R. Leone
Arthur S. Levine, M.D.
Hulda Lieberman
Donald A.B. Lindberg, M.D.
Harald A. Loe, D.D.S.
John D. Mahoney
Jaime L. Manzano
Jack N. Markowitz
Naomi E. Marr
Jack W. Martin
Larry G. Massanari
S. Anthony McCann
Thomas S. McFee
Henry Metzger
J. Donald Millar, M.D.
Larry D. Morey
Joseph A. Mottola
Jay Moskowitz, Ph.D.
Abner L. Nothman, M.D.
Jack Orloff, M.D.
Aletha R. Owens
Steve Paul, M.D.
Carl C. Peck, M.D.
Betty H. Pickett, Ph.D.
Arnold W. Pratt, M.D.
Alan S. Rabson, M.D.
David P. Rall, M.D.
Joseph E. Rall, M.D.
William F. Raub, Ph.D.
Luana L. Reyes
William A. Robinson, M.D.
Martin Rodbell, Ph.D.
Jesse Roth, M.D.
George H. Rudy
David A. Rust
Thomas Scarlett
Philip E. Schambra, Ph.D.
Matthew G. Schwientek
Ellen Schillinglaw
Lawrence E. Shulman, M.D.
Robert Singyke
Barbara S. Sledge
Vivian L. Smith
Marvin Snyder, Ph.D.
Dale W. Sopper
Malcolm M.B. Sterrett

Robert E. Stovenour
Robert A. Streimer
Boris Tabakoff, Ph.D.
John M. Taylor
Robert L. Trachtenberg
Margaret A. VanAmringe
Kenneth R. Warren, Ph.D.
Storm H. Whaley
Daniel F. Whiteside, D.D.S.
Robert A. Whitney, Jr., D.V.M.
Paul J. Wiesner, M.D.
T. Franklin Williams, M.D.

Dated: October 12, 1988.

Thomas S. McFee,
Assistant Secretary for Personnel
Administration.

Summary Statement

Department of Health and Human
Services

ACTION: Listing of members of this
Department's Senior Executive Service
Performance Review Boards.

DATE: Performance Review Boards
effective October 12, 1988.

FOR FURTHER INFORMATION CONTACT:
Brenda J. Clinton, 202-426-2753.

[FR Doc. 88-24279 Filed 10-19-88; 8:45 am]
BILLING CODE 4110-60-M

Centers for Disease Control

Change in the Interagency Committee on Smoking and Health

"Federal Register" Citation of
Previous Announcement: 53 FR 30871.
Previously Announced Time and Date
of the Meeting: 9:00 a.m.-4:00 p.m.,
October 27, 1988.

Change in the Meeting. The
Committee will meet at 8:30 a.m.-4:00
p.m.

Dated: October 17, 1988.

Elvin Hilyer,
Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 88-24367 Filed 10-19-88; 8:45 am]
BILLING CODE 4160-18-M

FOOD AND DRUG ADMINISTRATION

[Docket No. 88F-0315]

BYK Chemie GmbH; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug
Administration (FDA) is announcing
that BYK Chemie GmbH has filed a
petition proposing that the food additive

regulations be amended to provide for
the safe use of *alpha, omega*-bis[3-
hydroxypropyl]dimethylpolysiloxane
reaction product with *epsilon*-
caprolactone, acetylated as components
of articles for use in contact with food.

FOR FURTHER INFORMATION CONTACT:
Richard H. White, Center for Food
Safety and Applied Nutrition (HFF-335),
Food and Drug Administration, 200 C St.
SW., Washington, DC 20204, 202-472-
5690.

SUPPLEMENTARY INFORMATION: Under
the Federal Food, Drug, and Cosmetic
Act (sec. 409(b)(5), 72 Stat. 1786 (21
U.S.C. 348(b)(5))), notice is given that a
petition (FAP 8B4103) has been filed by
BYK Chemie GmbH, Abelstrasse 14, D-
4230 Wesel, Federal Republic of
Germany, proposing that § 175.300
Resinous and polymeric coatings (21
CFR 175.300) be amended to provide for
the safe use of *alpha, omega*-bis[3-
hydroxypropyl]dimethylpolysiloxane
reactions product with *epsilon*-
caprolactone, acetylated as components
of articles for use in contact with food.

The potential environmental impact of
this action is being reviewed. If the
agency finds that an environmental
impact statement is not required and
this petition results in a regulation, the
notice of availability of the agency's
finding of no significant impact and the
evidence supporting that finding will be
published with the regulation in the
Federal Register in accordance with 21
CFR 25.40(c).

Dated: October 7, 1988.

Richard J. Ronk,
Acting Director, Center for Food Safety and
Applied Nutrition.

[FR Doc. 88-24290 Filed 10-19-88; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88G-0318]

Gattefosse, S.A.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug
Administration (FDA) is announcing
that a petition (GRASP 8G0344) has
been filed on behalf of Gattefosse, S.A.,
proposing to affirm that glyceryl
palmitostearate be affirmed as generally
recognized as safe (GRAS) as a direct
human food ingredient.

DATE: Comments by December 19, 1988.

ADDRESS: Written comments to the
Dockets Management Branch (HFA-
305), Food and Drug Administration, Rm.

4-62, 5600 Fishers Lane, Rockville, MD
20857.

FOR FURTHER INFORMATION CONTACT:
JoAnn Ziyad, Center for Food Safety
and Applied Nutrition (HFF-334), Food
and Drug Administration, 200 C St. SW.,
Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under
the Federal Food, Drug, and Cosmetic
Act (sec. 409(b)(5), 72 Stat. 1786 (21
U.S.C. 348(b)(5))) and the regulations for
affirmation of GRAS status in § 170.35
(21 CFR 170.35), notice is given that a
petition (GRASP 8G0344) has been filed
on behalf of Gattefosse, S.A., Saint-
Priest, France, proposing that glyceryl
palmitostearate be affirmed as GRAS
for use as a direct human food
ingredient.

The petition has been placed on
display at the Dockets Management
Branch (address above).

Any petition that meets the
requirements outlined in 21 CFR 170.30
and 170.35 is filed by the agency. There
is no pre-filing review of the adequacy of
data to support a GRAS conclusion.
Thus, the filing of a petition for GRAS
affirmation should not be interpreted as
a preliminary indication of suitability for
GRAS affirmation.

The potential environmental impact of
this action is being reviewed. If the
agency finds that an environmental
impact statement is not required and
this petition results in a regulation, the
notice of availability of the agency's
finding of no significant impact and the
evidence supporting that finding will be
published with the regulation in the
Federal Register in accordance with 21
CFR 25.40(c).

Interested persons may, on or before
December 19, 1988, review the petition
and/or file comments (two copies,
identified with the docket number found
in brackets in the heading of this
document) with the Dockets
Management Branch (address above).
Comments should include any available
information that would be helpful in
determining whether the substance is, or
is not, GRAS for the proposed use. A
copy of the petition and received
comments may be seen in the Dockets
Management Branch between 9 a.m. and
4 p.m., Monday through Friday.

Dated: October 7, 1988.

Richard J. Ronk,
Acting Director, Center for Food Safety and
Applied Nutrition.

[FR Doc. 88-24289 Filed 10-19-88; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration (OACT-020-N)

Medicare Program; SNF Coinsurance Amount for 1989

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that the skilled nursing facility coinsurance amount for calendar year 1989 for the 1st through 8th days of extended care services in a skilled nursing facility under Medicare's hospital insurance program (Part A) is \$25.50. The Medicare statute specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813(a)(3) of the Act requires, until January 1, 1989, that the amount payable for extended care services in a skilled nursing facility during a spell of illness is to be reduced by an amount equal to one-eighth of the hospital deductible, per day, for the 21st through 100th day of covered extended care services.

Section 102 of Pub. L. 100-360 amended section 1813(a) and repealed section 1813(b)(3) of the Act to change the method of determining coinsurance for skilled nursing facility (SNF) care and to change the days subject to coinsurance. Beginning January 1, 1989, beneficiaries are liable for coinsurance for days one through eight of covered days spent in a SNF in a calendar year rather than days 21 through 100 in a spell of illness. Notice of the coinsurance amount applicable to extended care services in the succeeding year must be published in September.

II. Skilled Nursing Facility Coinsurance Amount for 1989

The coinsurance is 20 percent of the national average per diem cost estimated for a year by HCFA before September 1 of the previous year. The amount is rounded to the nearest multiple of \$.50. (If it is a multiple of \$.25 but not of \$.50, the amount is rounded to the next highest multiple of \$.50.)

The SNF coinsurance amount for calendar year 1989 is \$25.50.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the SNF Coinsurance Rate

As discussed in Section II of this notice, the SNF coinsurance rate for 1989 is equal to 20 percent of the

national average per diem cost for Medicare extended care services for 1989. The national average per diem cost is determined on a reasonable cost basis and includes any cost sharing costs paid by the beneficiary.

The principal steps involved in projecting the future cost per day of skilled nursing care are: (a) Determining the present cost per day to serve as a projection base, using 100 percent sample of SNF bills, actual beneficiary billing experience (to identify coinsurance), and a review of SNF cost reports; and (b) projecting increases in cost per day amounts.

We have completed the above steps, basing our projections for 1989 on (a) current historical data from 1987 and (b) projection assumptions from the 1988 Annual Report of the Board of Trustees Alternative II-B (Intermediate) assumptions. It is estimated that in calendar year 1989 the national average per diem cost for Medicare extended care services is \$127.43. Thus, 20 percent of this cost is \$25.49, and the coinsurance rate is \$25.50.

IV. Costs to Beneficiaries

The coinsurance amount for 1989 represents a \$42 decrease from coinsurance for 1988. In addition, the coinsurance amount applies to the first eight days only in 1989. That is, we estimate that in 1989 there will be 2.3 million days subject to coinsurance at \$25.50 per day versus 3.7 million days subject to coinsurance at \$67.50 per day in 1988. The total savings to beneficiaries is about \$190 million.

V. Regulatory Impact Statement

This notice merely announces an amount required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

(Section 1813(a)(3)(C) of the Social Security Act (42 U.S.C. 1395e(a)(3)(C)).
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 30, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: October 5, 1988.

Otis R. Bowen,
Secretary.
[FR Doc. 88-24431 Filed 10-13-88; 4:13 pm]
BILLING CODE 4120-01-M

National Institutes of Health

Establishment; National Diabetes Advisory Board et al.

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and section 222 of the Public Health Service Act, as amended (42 U.S.C. 217a), the Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, of the following committees:

National Diabetes Advisory Board

The Board shall review and evaluate the implementation of the current Diabetes Plan; periodically update the Plan to ensure its continuing relevance; and for the purpose of assuring the most effective use and organization of resources respecting diabetes mellitus.

National Digestive Diseases Advisory Board

The Board shall review and evaluate the implementation of the current long-range plan; periodically update the Plan to ensure its continuing relevance; and for the purpose of assuring the most effective use and organization of resources respecting digestive and related diseases.

National Kidney and Urologic Diseases Advisory Board

Subsequent to the development of a long-range plan, the Board shall review and evaluate the implementation of the current Kidney and Urologic Diseases Plan.

These Boards shall advise and make recommendations to the Congress and the Secretary, the Director of the National Institutes of Health, the Director of the National Institute of Diabetes and Digestive and Kidney diseases, and the heads of other appropriate Federal agencies regarding the implementation and revision of the Plans.

Unless renewed by appropriate action prior to expiration, the Boards shall terminate on September 30, 1990.

Dated: October 14, 1988.

James B. Wyngaarden,
Director, National Institutes of Health.
[FR doc. 88-24287; Filed 10-19-88; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Privacy Act of 1974; Alteration of System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a major alteration to system of records 09-15-0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA." System of records 09-15-0045 is being altered to include debt management data from the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) system of records 09-30-0027, "Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowship Clinical Training, Community Programs, HHS/ADAMHA/OA;" the National Institutes of Health (NIH) system of records 09-25-0112, "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD;" and the Indian Health Service (IHS) system of records 09-17-0002, "Indian Health Service Scholarship Program, HHS/HRSA/IHS."

DATE: PHS invites interested parties to submit comments on the proposed alteration on or before November 21, 1988. PHS has sent a report of the Altered System to Congress and to the Office of Management and Budget (OMB) on October 12, 1988. The alteration of this system of records will be effective 60 days from the date of its submission to OMB, and the proposed routine uses will be effective 30 days from this publication, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Room 14A-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3780. This is not a toll-free number. We will make comments received available for public inspection at the above address during normal business hours, 8:30 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT: James C. Hargrave, Chief, Debt Management Branch, Health Resources and Services Administration, Department of Health and Human Services, Room 16A-09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6344. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA maintains System of Records 09-15-0045

to reduce the amount of outstanding debts owed to the Federal Government. The system of records covers individuals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act as amended and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs.

To improve and expand the PHS debt collection effort, HRSA is altering this system of records to include delinquent debtor records from ADAMHA system of records 09-30-0027, NIH system of records 09-25-0112, and IHS system of records 09-17-0002 of individuals receiving Federal salaries or other benefit payments and who are indebted to the U.S. Government. The inclusion of this data in this system of records will allow PHS agencies to locate and initiate prompt collection action by contacting the debtors for voluntary repayment or by pursuing involuntary offset procedures against the debtors' wages.

The 09-15-0045 system notice was last published in the *Federal Register* on November 24, 1986 (51 FR 42519-42521) and routine uses were added on December 28, 1987 (52 FR 48880) and March 3, 1988 (53 FR 6874-6875). This proposed notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the changes have become effective.

Dated: October 13, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Fiscal Services, Office of the Administrator, HRSA, Parklawn Building, Room 16-05, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions, HRSA, Parklawn Building, Room 8-05, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service, HRSA, Parklawn Building, Room 5A-55, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance, HRSA, Parklawn Building, Room 7-05, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Drug Abuse, Grants Management Branch, Room 10-25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Alcohol Abuse and Alcoholism, Grants Management Branch, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Mental Health, Grants Management Branch, OPS, Room 7C-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institutes of Health, Division of Financial Management, Federal Assistance, Accounting Branch, Building 31, Room B1B04, 9000 Rockville Pike, Bethesda, MD 20892.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs. The individuals covered by this system include students in various health professions and health professionals such as physicians, dentists, pharmacists, optometrists, podiatrists, veterinarians, public health personnel, nurses, audiologists, speech pathologists, health care administration personnel, medical technologists, chiropractors, clinical psychologists, and other health personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains loan repayment status, amounts of student indebtedness, schools of attendance of borrowers, lending institutions of borrowers, tax identification numbers (Social Security numbers), billing notices, and demographic information pertaining to borrowers funded by the Health Resources and Services Administration (HRSA), the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the National Institutes of Health (NIH), or the Indian Health Service (IHS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982, 5 U.S.C. 5514 note.

PURPOSE(S):

The purpose of the system is to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by HRSA, ADAMHA, NIH, and IHS. The records may also be used by other components within the Department of Health and Human Services to facilitate loan or debt management activities. This system is maintained to reduce the amount of outstanding debts owed to the Federal Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Records may be disclosed to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. HRSA will disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money payable to or held on behalf of debtors other than Federal employees.

c. To the Department of Treasury, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in

the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute, rule, regulation, or order.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or
(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party of litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determine that such disclosure is compatible with the purpose for which the records were collected.

6. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

7. HRSA may disclose information from this system of records to another agency that has asked the Department to effect an administrative or salary offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual, and other information concerning the administrative or salary offset.

8. HRSA may disclose information from this system of records to be consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

a. To establish creditworthiness of a loan/grant/scholarship/traineeship applicant; and

b. To assess and verify the ability of a debtor to repay debts owed to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program

under which the application or claim is being processed.

9. HRSA may disclose to the Department of the Treasury, Internal Revenue Service (IRS), information about an individual applying for a loan under any loan program authorized by the Public Health Service Act to find out whether the loan applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

10. HRSA will report to the Department of the Treasury, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owned by an individual to the Federal Government when a debt becomes partly or wholly uncollectable—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individuals to forgive or compromise the debt.

11. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim; and the agency or program under which the claim arose.

12. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual.

13. HRSA will disclose information concerning a delinquent debtor from this system of records to the Department of Justice for litigation or further administrative action.

14. HRSA may disclose records of delinquent debtors to the Defense Manpower Data Center, Department of Defense, to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government and which arose under

programs administered by the Public Health Service. HRSA will disclose this information in an effort to collect the debts by administrative or salary offset, under the provisions of the Debt Collection Act of 1982.

15. HRSA may disclose records of delinquent debtors to the United States Postal Service to conduct matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or certain benefit payments resulting from Federal employment and are delinquent in their repayment of debts owed to the U.S. Government and which arose under programs administered by the Public Health Service. HRSA will disclose this information in an effort to collect the debts by administrative or salary offset, under the provisions of the Debt Collection Act of 1982.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1582(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable PHS agencies to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, and electronic word processing diskettes.

RETRIEVABILITY:

Records are retrievable by name, Social Security number, award number, and school of attendance.

SAFEGUARDS:

1. Authorized User: Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for

implementing programs funded by HRSA, ADAMHA, NIH, or IHS.

2. Physical Safeguards: Twenty-four hour building security guard. File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and non-duty hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. Procedural Safeguards: Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts. The HRSA project directors, project officers, and the System Manager oversee compliance with these requirements.

4. Implementing Guidelines: The safeguards described above were established in accordance with the DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administrative Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under "System Location" for two years after completion of the repayment of the loan. The records are then sent to the Federal Records Center for a four-year retention period, and are subsequently disposed of in accordance with HRSA, ADAMHA, NIH, or IHS Records Control Schedule, whichever is applicable. The records control schedule and disposal standards for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Official:
Associate Administrator for Operations and Management, HRSA, Room 14A-03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Office of the Administrator: Chief, Debt Management Branch, Division of Fiscal Services, HRSA, Room 16A-09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Indian Health Service: Chief, Financial Management Branch, IHS,

Room 5A-38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Care Delivery and Assistance: Director, Office of Financing Services, BHCDA, Room 7-39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions: Director, Office of Debt Management, BHP, Room 8A-43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Drug Abuse: Chief, Grants Management Branch, OA, Room 10-25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute on Alcohol Abuse and Alcoholism: Chief, Grants Management Branch, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institute of Mental Health: Chief, Grants Management Branch, Room 7C-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

National Institutes of Health: Chief, Federal Assistance Accounting Branch, Division of Financial Management, NIH, Room B1B05, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you, contact the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understand that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a \$5,000 fine. In addition, the following information is needed: (1) The name of the assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

Requests by mail: Written requests must contain the name and address of the requester, his/her date of birth, and

either his/her notarized signature to verify his/her identity, or a written certification that the requester is who he/she claims to be and understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a \$5,000 fine. In addition, the following information is needed: The name of the assistance program that he/she participated in, and for student assistance programs dates of enrollment in the program, and school(s) of attendance.

In addition, be informed that provision of the Social Security number may assist in the verification of your identity as well as the identification of your record. Providing your Social Security number is voluntary and you will not be refused access to your record for failure to disclose your Social Security number.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system: Federal organizations, including but not limited to the Office of Inspector General/DHHS, the Office of the Administrator, the Bureau of Health Professions, and the Bureau of Health Care Delivery and Assistance—all of which administer HRSA-funded programs; ADAMHA system of records 09-03-0027 "Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs, HHS/ADAMHA/OA"; NIH system of records 09-25-0112 "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; IHS system of

records 09-17-0002 "Indian Health "Indian Health Service Scholarship Program, HHS/HRSA/IHS;" participating schools; lending institutions; consumer reporting agencies (credit bureaus); and other Federal agencies, including but not limited to the Department of the Treasury, Internal Revenue Service (IRS), and the U.S. Post Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-24294 Filed 10-19-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-09-4132-12]

Environmental Assessment; Comment Period; Mt. Hillers Wilderness Study Area, UT

AGENCY: Bureau of Land Management, Richfield, Interior.

ACTION: Notice of comment period.

SUMMARY: The Environmental Assessment (EA) is available for the proposed mining and exploration in the Mt. Hillers Wilderness Study Area. The comment period will end 15 days from publication in the *Federal Register*. For further information contact Roy Edmonds at (801) 896-8221. Copies of the EA are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Dated: October 12, 1988.

Jerry W. Goodman,
District Manager.

[FR Doc. 88-24318 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-00-M

[WY-030-09-4320-12]

Rawlins District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that a meeting of the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATE: November 16, 1988, 10:00 a.m. to 3:00 p.m.

ADDRESS: Bureau of Land Management, Rawlins District Office, 1300 N. Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT:

John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice Chairman.
3. Improvements proposed for completion in FY89 with range betterment (8100) funds.
4. Update on wild horse gathering.
5. Update on status of monitoring and Rangeland Program Summary.
6. Opportunity for the public to present information or make comments.

The meeting is open to the public. Anyone interested in attending this meeting or making an oral presentation, must notify the District Manager by November 14, 1988. Written statements may also be filed for the Board's consideration.

Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Richard Bastin,

Rawlins District Manager.

[FR Doc. 88-24317 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-22-M

[NM-018-4212-13; NM NM 65213/GP8-0125]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in Taos County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to Rio Grande Land Partnership, a New Mexico General Partnership, and Abeyta Grazing Association, a New Mexico Non-Profit Corporation on November 13, 1987, for the surface estate in the following described land in Santa Fe County, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

New Mexico Principal Meridian

T. 17 N., R. 9 E.,

Sec. 16, lot 10.

Containing 31.73 acres.

In exchange for the land described above, Rio Grande Land Partnership conveyed to the United States the

surface estate in 3,802.06 acres, more or less, in Taos County, New Mexico as described in the Warranty Deed to the United States dated November 13, 1987, and recorded on November 17, 1987, in book A-185, pages 623-625 in the records of Taos County, New Mexico.

The purpose of the exchange was to eliminate the need for continued management of a small, isolated parcel of public land and improve management of larger parcels of public land near the Rio Grande Gorge. The lands reconveyed to the United States have high values for wildlife habitat, livestock grazing, and public recreation in the form of hunting and hiking. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were appraised at \$317,300.00 and \$317,154.50, respectively. An equalization payment in the amount of \$146.00 was paid to the United States.

At 9:00 a.m. on November 28, 1988, the non-Federal lands reconveyed to the United States shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 9:00 a.m. on November 28, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 13, 1988.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 88-24353 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ 020-09-4212-11; A 20633]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

Maricopa County Board of Supervisors proposes to develop a regional park in the San Tan Mountains on public lands legally described as:

Gila and Salt River Meridian, Arizona

T. 3 S., R. 7 E.,
Sec. 4, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 8, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 9, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$;
Sec. 10, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$;
Sec. 16, N $\frac{1}{2}$;
Sec. 17, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 18, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 19, lots 2, 3, 4, E $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 20, E $\frac{1}{2}$ E $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 21, all;
Sec. 22, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 27, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 28, all;
Sec. 29, all;
Sec. 30, all;
Sec. 31, all;
Sec. 32, all.

Aggregating 7178.61 acres, more or less.

The land has been examined and found suitable for classification for recreation and public purposes under the provisions of the R&PP Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869, 869-4) and the regulations contained in 43 CFR 2740 and 43 CFR 2912.

In addition, the land is determined to meet general classification criteria of 43 CFR 2410.1(a-d) and specific public purposes classification criteria of 43 CFR 2430.4 (a and c).

Classification of this land under the provisions of the above cited R&PP Act segregates them from appropriations under the public lands laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the *Federal Register* (43 CFR 2741.5(2)).

Detailed information concerning this classification is available from the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the *Federal Register* interested parties may submit comments to the Phoenix District Manager.

Dated: October 13, 1988.

Henri R. Bisson,
District Manager.

[FR Doc. 88-24311 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-09-4212-12; A 20346-0]

Realty Action, Exchange of Public Lands, Navajo and Apache Counties, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 12 N., R. 20 E.,
Sec. 8, lots 1-3.

T. 13 N., R. 18 E.,
Sec. 12, E $\frac{1}{2}$ E $\frac{1}{2}$;
T. 13 N., R. 23 E.,
Sec. 22, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 14 N., R. 17 E.,
Sec. 8, SE $\frac{1}{4}$;
Sec. 22, NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 24, NE $\frac{1}{4}$.
T. 14 N., R. 19 E.,
Sec. 4, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Sec. 10, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 12, N $\frac{1}{2}$;
Sec. 28, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 15 N., R. 16 E.,
Sec. 6, lots 1-4, 8.
T. 15 N., R. 19 E.,
Sec. 12, lots 1-3, N $\frac{1}{2}$, SW $\frac{1}{4}$;
Sec. 14, all.
T. 16 N., R. 16 E.,
Sec. 28, all.
T. 16 N., R. 17 E.,
Sec. 6, lots 4 and 5.
T. 17 N., R. 15 E.,
Sec. 22, W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 17 N., R. 16 E.,
Sec. 24, lots 1-4, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$.
T. 17 N., R. 17 E.,
Sec. 28, W $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$.
T. 17 N., R. 18 E.,
Sec. 4, lots 1-4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$.
T. 18 N., R. 16 E.,
Sec. 4, lot 1, S $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 18 N., R. 24 E.,
Sec. 10, E $\frac{1}{2}$;
Sec. 12, N $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 31, lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$.
Containing 7,251.23 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the *Federal Register* of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: October 14, 1988.

Henri R. Bisson,
District Manager.

[FR Doc. 88-24302 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-32-M

(NM-010-GP9-010)

Availability of Taos Record of Decision and Resource Management Plan**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of availability.

SUMMARY: On July 26, 1988, Larry L. Woodard, New Mexico State Director, BLM, signed the Record of Decision (ROD) for the Taos Resource Management Plan (RMP). This ROD documents the approval of the plan described in the Taos Proposed RMP/Final Environmental Impact Statement (EIS) of October, 1987, as the land use plan for the Taos Resource Area.

This RMP will provide the framework to guide management decisions during the next 10 to 20 years on the Resource Area's 564,000 surface acres of public land and 1,800,000 subsurface acres. The goal of this RMP is to provide for a combination of resource uses that will protect important environmental values and sensitive resources and at the same time allow development of resources which produce commercial goods and services. The RMP also describes how the five key resource issues that were identified with public involvement early in the planning process will be resolved. These issues are: (1) Special Management Areas; (2) transportation; (3) vegetative uses; (4) land ownership adjustments; and (5) right-of-way exclusion areas.

In addition to the analysis performed for the EIS portion of the RMP and in compliance with the requirements of the National Environmental Policy Act of 1969, further environmental analysis will be conducted for site-specific plans and actions resulting from implementation of the RMP. The Resource Area will also prepare an RMP summary update each year to inform the public of the site-specific plans, activities, and environmental analyses to be developed in the forthcoming year. This will allow interested members of the public to request information on these plans, activities and environmental analyses, and to comment upon them. The RMP summary updates will also inform the public of the progress being made in implementing the RMP.

Availability: The ROD has been sent to all recipients of the Proposed RMP/Final EIS. The approved RMP will be extracted from the Proposed RMP and printed. Copies of the ROD, and the forthcoming RMP and yearly RMP summary updates are available upon request from the Taos Area Manager at the address below:

FOR FURTHER INFORMATION CONTACT: Area Manager, Taos Resource Area, Bureau of Land Management, P.O. Box 6168, Taos, New Mexico 87571, telephone (505) 758-8851.

SUPPLEMENTARY INFORMATION: Implementation of the RMP decisions will continue over a period of years. Priorities will be developed to guide the order of implementation for those decisions that cannot be immediately implemented. The implementation priorities may be revised based upon new administrative policies, new Departmental directions or new Bureau goals.

Approval of the RMP placed into immediate effect the decisions described in the proposed RMP to protect important resource values in nine Areas of Critical Environmental Concern (ACECs), which were designated upon approval of the RMP. ACEC designated and the acreages of each are as follows:

Guadalupe Mountain (1220)
Racecourse (1120)
San Antonio Gorge (547)
Winter Range (6688)
Aqua Caliente (580)
Embudo Canyon (1060)
Black Mesa (5380)
Ojo Caliente (17,708)
Sombrello (8865)

Dated: October 13, 1988.
Larry L. Woodard,
State Director.
[FR Doc. 88-24309 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-FB-M

[CA-940-08-4520-12; Group 676]**Filing of Plat of Survey; California**

October 13, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lake County

T. 15 N., R. 10 W.,
T. 15 N., R. 11 W.

2. These plat(s), representing the (1) dependent resurvey of a portion of the south boundary, the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 19, 30, and 31, Township 15 North, Range 10 West, Mount Diablo Meridian, California,

(2) dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the survey of a portion of the subdivision of section 25, Township 15 North, Range 11 West, Mount Diablo Meridian, California,

under Group No. 676 California, was accepted September 21, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.
[FR Doc. 88-24312 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 980]**Filing of Plat of Survey; California**

October 13, 1988.

1. This plat of the following described land will be officially filed in the California State Offices, Sacramento, California immediately:

Mount Diablo Meridian, Madera County

T. 9 S., R. 21 E.,
T. 8 S., R. 21 E.

2. This plat(s) representing the dependent resurvey of the Second Standard Parallel South along a portion of the north boundary of T. 9 S., R. 21 E., a portion of the west boundary, and a portion of the subdivisional lines of T. 8 S., R. 21 E., and the survey of the subdivision of section 31, T. 8 S., R. 21 E., Mount Diablo Meridian, California under Group No. 980 California, was accepted September 14, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.
[FR Doc. 88-24313 Filed 10-19-88; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-08-4520-121; Group 965]**Filing of Plat of Survey; California**

October 13, 1988.

1. This plat of the following described land will be officially filed in the California Staff Office, Sacramento, California immediately:

Mount Diablo Meridian, Trinity County

T. 26 N., R. 12 W.

Humboldt Meridian, Trinity County

T. 4 S., R. 8 E.

T. 5 S., R. 8 E.

2. This plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North along a portion of the south boundary, and a portion of the west boundary of T. 26 N., R. 12 W., Mount Diablo Meridian, and a portion of the First Standard Parallel South along a portion of the south boundary T. 4 S., R. 8 E., and a portion of the subdivisional lines of T. 5 S., R. 8 E., Humboldt Meridian, and the survey to complete sections 4 and 5 and the survey of the subdivision of sections 3, 4, and 5, T. 5 S., R. 8 E., Humboldt Meridian, California, under Group No. 965 California, was accepted September 14, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Six Rivers National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-24314 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-08-4520-12; Group 747]**Filing of Plat of Survey; California**

October 11, 1988.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Imperial County

T. 16 S., R. 21 E.

2. This plat(s)/8 sheets representing the dependent resurvey of a portion of the east boundary and a portion of the

subdivisional lines, the retacement of a portion of the United States, Mexico International Boundary, and the survey of the extension of certain subdivisional lines, the subdivision of sections 25 and 35, the public reserve line in the E 1/2 and the SW 1/4 of section 35, the meanders of the present right bank of the Colorado River, a control line along the All American Canal, a portion of the centerline of the All American Canal, and certain United States fee rights-of-way, Township 16 South, Range 21 East, San Bernardino Meridian, California under Group No. 747 California, was accepted September 9, 1988.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Indian Affairs.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-24315 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-40-M

[WY-930-09-4214-10; WYW 101818]**Amendment of Proposed Withdrawal; Wyoming**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw an additional 80 acres of Federal mineral estate in Big Horn County, to protect the Spanish Point Caves and associated subsurface karstic waterways. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing.

DATE: Comments must be received by January 18, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-772-2072.

SUPPLEMENTARY INFORMATION: On September 20, 1988, a petition was approved allowing the Bureau of Land Management to file an application to add 80 acres of public mineral estate to

a proposed withdrawal request which was approved on March 24, 1988, and published in the **Federal Register** on April 14, 1988. The following described public mineral estate will be withdrawn from settlement, sale, location, or entry under the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 52 N., R. 88 W.,

Sec. 21, W 1/2 NW 1/4.

The area described aggregates 80 acres in Big Horn County

The purpose of the proposed withdrawal is to protect the Spanish Point Caves and associated subsurface karstic waterways.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are only those uses that are specifically permitted by an authorized officer of the Bureau of Land Management.

Dated: October 6, 1988.

F. William Eikenberry,

Associate State Director.

[FR Doc. 88-24316 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service**Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders**

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1988, through April 30, 1989. The List of Restricted Joint Bidders published in the **Federal Register** on April 1, 1988, at 53 FR 10570 covered the bidding period of May 1, 1988, through October 31, 1988.

Group I. Chevron Corp.; Chevron U.S.A. Inc.
 Group II. Exxon Corp.
 Group III. Texaco Inc.; Texaco Producing Inc.; Getty Oil Co.
 Group IV. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.
 Group V. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.
 Group VI. Standard Oil Co.; Sohio Petroleum Co.; Standard Oil Production Co.; Standard Alaska Production Co.

William D. Bettenberg,

Director, Minerals Management Service.

Date: October 12, 1988.

[FR Doc. 88-24207 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as National Natural Landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designation of these areas as National Natural Landmarks by the Secretary of the Interior may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Written comments should be received no later than December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney III, Natural Landmarks Branch, Wildlife and Vegetation Division, (202) 343-9525.

Robert Stanton,

Associate Director for Operations.

Date: October 11, 1988.

California

Sutter County

Oso Plumas—This 3,756-acre site is located along the lower Feather River approximately 25 miles north of Sacramento. It is the largest and highest quality example of Great Valley Mixed Riparian Forest known to be remaining in the South Pacific Border Natural Region. This heterogeneous forest is dominated by Fremont cottonwood and sycamore with an understory of boxelder, Oregon ash, Hind's walnut,

and tree willows. Extensive thickets, saplings, shrubs, and vines characterize the area offering roosting and breeding habitats for several rare riparian-dependent faunal species, including the Valley elderberry longhorn beetle, the California yellow-billed cockoo, and the Swainson's hawk. A variety of other rare fauna inhabit the area. The area varies from 0.8-1.2 miles wide and runs for 8 miles along the Feather River. This site is in multiple private and State ownership.

Idaho

Clearwater County

Aquarius Natural Area—This 3,900-acre site is located 40 miles northeast of Orofino along the North Fork of the Clearwater River. This site, administered by the U.S. Forest Service, is the most diverse example of a type of cedar-hemlock forest known as montane coastal refugium. It is restricted in its distribution to the Clearwater River Basin of northern Idaho. Deeply incised into the mountainous terrain, characteristic of the Clearwater River Basin, the Aquarius Natural Area displays dramatic relief averaging 2,500 feet in a horizontal distance of less than one mile. The site lies along the border zone of the Idaho batholith, where quartz monzonite intrudes Pre-Cambrian metamorphic rocks including gneiss, quartzite, and schists. Colluvial and alluvial fans occur in the canyon basin. Three plant taxa nearly endemic to the Clearwater Basin are known to occur within the site including Case's corydalis, Constance's bittercress, and the Idaho strawberry.

New Mexico

Grant County

Gila River Sycamore Riparian Area—This 1,336-acre site extends more than 7 miles along the Gila River, 4.5 miles north-northwest of Gila. It is the best known example of Arizona Sycamore-Fremont poplar riparian woodland remaining in the Southwestern United States. It supports nine listed threatened and endangered species and harbors one of the richest known bird habitats in New Mexico. At least six major plant associations are represented. Flora includes Arizona sycamores, Fremont cottonwoods, netleaf hackberry, Arizona walnut, boxelder, Goodings willow, Arizona white oak and Emory oak—all with some old-growth specimens. This natural area is administered or owned by the U.S. Forest Service, The Nature Conservancy and several other private land owners.

Oklahoma

Greer County

Jester Cave—This 320-acre site contains the largest known gypsum cave in the United States, with 32,949 feet of surveyed passages. Most caves are dissolved in limestone, not gypsum. Approximately 200 gypsum caves are known from western Oklahoma, southwestern Kansas, eastern New Mexico, and the Texas Panhandle. The site is in private ownership and grazing is the dominant land use.

Oregon

Jackson County

Round Top Butte—This 1,250-acre site is located 8 miles west of Butte Falls and 6 miles northeast of Eagle Point. The site, administered by the Bureau of Land Management with other lands owned by several private individuals, contains the best remaining example of native valley upland grasslands in the valleys of southwestern Oregon and northwestern California in the North Pacific Border Natural Region; as well as the best remnant of Oregon white oak savanna and of ponderosa pine savanna. It is the only site with examples of all of the community types which occurred throughout the valleys of southern Oregon and northern California prior to European settlement. The site provides a haven for wildlife and a variety of rare plants. The site is a nesting area for owls, hawks and the Lewis woodpecker (known only from seven sites and a candidate for listing under the Endangered Species Act). Two additional plant species found here are listed as rare, threatened and endangered by the Oregon Heritage Data Base.

Jefferson County

The Island—This 178-acre site is located 10 miles southeast of Madras. The site is the largest and most pristine example of Western juniper/big sagebrush/bluebunch wheatgrass community in the Columbia Plateau. It also contains the best example of the pumice Western juniper steppe community. This site is administered jointly by the Bureau of Land Management and the U.S. Forest Service.

Morrow County

Boardman Natural Area—This 6,656-acre site (consisting of three contiguous parcels) is located 5 miles southeast of Boardman. It is the best example of lowland grassland and shrubland in the Columbia Plateau Natural Region. This mosaic of shrublands and palouse

grasslands is dominated by one species of shrub—big sagebrush, and three species of grasses—needle-and-thread, bluebunch wheatgrass, and Sandberg bluegrass. The site is controlled by the Bureau of Land Management under lease to the Department of the Navy. The Research Natural Area within the site is managed by The Nature Conservancy.

Pennsylvania

Lackawanna County

Nay Aug Park Gorge and Waterfall—This 35-acre site is located in the Northern Anthracite Basin of the Appalachian Ranges Natural Region, within the city of Scranton. The site is an excellent example of a waterfall and gorge resulting from erosion of differentially resistant rocks. These prominent geological features were created by Roaring Brook, a tributary of the Lackawanna River. The entire park exhibits several geological themes vividly illustrating active landscape-forming processes. The sedimentary rocks existing at this site demonstrate sedimentary processes, environments, and epochs of earth history. The waterfall is an excellent example of a fluvial nickpoint due to glaciation during the Illinoian and Wisconsin glacial stages. This natural area is considered among the best available within the natural region for public interpretation of earth history. The site is owned and managed by the city of Scranton.

Texas

Kenedy, Kleberg, & Willacy Counties

Big Shell/Little Shell Beaches—This 2,200-acre site is located within Padre Island National Seashore, southeast of Corpus Christi. It contains the only extensive shell beaches on the predominantly terrigenous barrier islands of the Gulf Coastal Plain Natural Region. The shell beaches are an excellent example of shoreline deposition in a zone of converging surface currents and littoral drifting of sediment. These beaches are also among the least disturbed in the region. This site is administered by the National Park Service.

Kenedy and Kleberg Counties

Upper Laguna Madre—This 237,253-acre site is also located within Padre Island National Seashore. It is the only hypersaline lagoon in the United States. Upper Laguna Madre extends from adjacent Corpus Christi Bay southward to an area of wind-tidal flats known as the Middle Ground or Land Cut. This

site is also administered by the National Park Service.

[FR Doc. 88-24235 Filed 10-19-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31333]

Southern Alabama Railroad Co., Inc.; Acquisition and Operation Exemption; Central of Georgia Railroad Co.

Southern Alabama Railroad Company, Inc. (SARC) has filed a notice of exemption to acquire and operate approximately 15.04 miles of rail line of Central of Georgia Railroad Company (Central), a common carrier operated as part of Southern Railway System, extending from milepost 374.96 at Troy, AL, to milepost 390.00 at Goshen, AL. The transaction is expected to be consummated on approximately October 15, 1988. Additionally, SARC, which will be a Class III carrier, will issue securities, which will be an exempt transaction under 49 U.S.C. 1175.1.

Any comments must be filed with the Commission and served on R. Lawrence McCaffrey, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797, and Richard W. Parker, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

SARC must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. See *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).¹

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-24037 Filed 10-19-88; 8:45 am]

BILLING CODE 7035-01-M

¹ SARC certified that it has identified such sites and structures to the appropriate State historic preservation officer.

[Docket No. AB-290 (Sub-14X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Helena and Durham, NC

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 19.82-mile line of railroad, between milepost 91.70 at Helena, NC, and milepost 111.52 at Durham, NC.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rails service on the line (or by 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. 10905(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 on November 19, 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 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 9, 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: Roger A.

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 Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the FEDERAL REGISTER on December 22, 1987, (52 FR 48440-48446).

Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

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, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 25, 1988. 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: October 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-24220 Filed 10-19-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Civil Rights Division, Individuals of Japanese Ancestry Who Were Interned During World War II

The Assistant Attorney General of the Civil Rights Division, pursuant to the Civil Liberties Act of 1988, Pub. L. No. 100-383, 50 U.S.C. App. 1989b, hereby notifies the public that the Civil Rights Division, is preparing to implement section 105 of this Act, which authorizes the Attorney General to identify, locate and make payment to each eligible individual of Japanese ancestry who was interned during World War II.

Any individual or organization wishing to do so may comment on the following questions at this time:

1. Are Peruvian Japanese who were brought to the United States during World War II eligible?
2. Are minors who were repatriated to Japan during World War II eligible?
3. How can voluntary evacuees who may be eligible, but did not complete "Change of Residence" cards, be verified?

Comments may be mailed to Valerie O'Brian, Office of Reparations Administration, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue, Washington, DC 20530.

Dated: October 17, 1988.
William Bradford Reynolds,

Assistant Attorney General, Civil Rights Division.

[DR Doc. 88-24213 Filed 10-19-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree; Outboard Marine Corp.

In accordance with the Policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Outboard Marine Corporation*, Civil Action No. 88-C-8571 was lodged with the United States District Court for the Northern District of Illinois. The action was filed pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607. The complaint asserted a claim for recovery of costs incurred and to be incurred by the United States in responding to releases and threatened releases of polychlorinated biphenyls ("PCBs") from a facility owned by Outboard Marine Corporation ("OMC") in Waukegan, Illinois, as well as a claim for recovery of damages for injuries to natural resources caused by such releases.

The proposed decree provides for OMC to establish and fund a trust that will undertake remedial action to address PCB contamination found at the company's Waukegan facility and in adjacent areas, including portions of Waukegan Harbor. The proposed remedial action includes dredging of PCB contaminated sediments from areas of Waukegan Harbor where average PCB concentrations exceed 50 ppm. The proposed decree also addresses contaminated soils and sediments in onshore areas where PCB concentrations exceed 50 ppm. Under the proposed decree, contaminated soils and sediments would be placed in three PCB containment cells to be constructed at the Waukegan Harbor Site. In order to permanently reduce the volume, toxicity and mobility of PCBs at the Waukegan Harbor Site, the proposed decree would require treatment of the most highly contaminated soils and sediments at the Site, by means of a thermal PCB extraction process that would remove at least 97 percent of the mass of PCB from such sediments and soils. Extracted PCBs would then be destroyed at an offsite facility. The proposed Consent Decree requires OMC to pay the United States Environmental Protection Agency's costs of overseeing the implementation of the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Outboard Marine Corporation*, DOJ Reference No. 90-5-1-1-979B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 6317, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice. The proposed Consent Decree package consists of a 73-page Consent Decree and 477 pages of Exhibits. You may request a copy of the Consent Decree with or without exhibits. Please specify in the letter of request whether or not exhibits are requested. A request for a copy of the proposed Consent Decree with exhibits should be accompanied by a check in the amount of \$55.00 (ten cents (10¢) per page copying costs) payable to the "United States Treasurer." A request for a copy of the proposed Consent Decree without exhibits should be accompanied by a check in the amount of \$7.30 payable to the "United States Treasurer."

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-24304 Filed 10-19-88; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II; 1988 Aggregate

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1988 aggregate production quotas.

SUMMARY: This notice establishes revised 1988 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATE: This order is effective October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On July 28, 1988, a notice of the proposed revised 1988 aggregate production quotas for certain controlled substances in Schedules I and II was published in the *Federal Register* (53 FR 28459). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before August 29, 1988.

As to methylphenidate, MD Pharmaceutical, through counsel, filed comments on the proposed revised 1988 aggregate production quota. MD Pharmaceutical wished to advise DEA of its concern over DEA's apparent intention to continuously reduce the aggregate production quota for methylphenidate even though the public's need for generic methylphenidate is continuing to increase. Also, MD Pharmaceutical urged DEA to consider the increasing need for generic methylphenidate in its establishment of the 1988 quota. MD Pharmaceutical requested that DEA consider if a reduction in the aggregate production quota for methylphenidate is necessary, and whether DEA will permit adequate amounts to be made available to meet patient needs and provide for adequate inventories. DEA has received and taken into consideration the 1987 production and distribution data submitted by both manufacturers of methylphenidate and believes that the revised aggregate production quota of 2,172,000 grams will be sufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, and for the maintenance of reserve stocks. No other comments and no request for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601 *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1988 revised aggregate production quotas be established as follows:

[Expressed as grams of anhydrous acid or base]

Basic Class	Established revised 1988 aggregate production quotas
Schedule I	
Lysergic acid diethylamide	11
Schedule II	
Allentani	0
Amphetamine	264,000
Cocaine	793,000
Codeine (for sale)	54,249,000
Desoxyephedrine	1,423,000
Levodopoxephedrine	1,400,000
Methamphetamine	23,000
Dextropropoxyphene	96,986,000
Dihydrocodeine	278,000
Fentanyl	5,000
Hydrocodone	2,791,000
Hydromorphone	183,000
Levorphanol	10,700
Methadone	1,645,000
Methadone Intermediate (4-cyano 2-dimethylamino-4,4-diphenylbutane)	2,057,000
Methylphenidate	2,172,000
Mixed Alkaloids of Opium	8,000
Morphine (for sale)	3,268,000
Morphine (for conversion)	59,807,000
Oxycodone (for sale)	2,406,000
Pentobarbital	14,407,000
Phencyclidine	36
Phenylacetone	413,000

[Expressed as grams of anhydrous acid or base]

Basic Class	Established revised 1988 aggregate production quotas
Secobarbital	971,000
Sufentanil	500

Dated: September 26, 1988.

John C. Lawn,
Administrator, Drug Enforcement
Administration.

[FR Doc. 88-24267 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-09-M

Quotas for Controlled Substances in Schedules I and II; 1989 Aggregate

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1989 aggregate production quotas.

SUMMARY: This notice establishes 1989 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: This order is effective October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of Title 28 of the Code of Federal Regulations.

On Friday July 29, 1988, a notice of the proposed 1989 aggregate production quotas for certain controlled substances in Schedules I and II was published in the *Federal Register* (53 FR 28710). All interested parties were invited to comment on or object to those proposed aggregate production quotas on or before August 29, 1988.

As to methylphenidate, MD Pharmaceutical, through counsel, filed comments on the proposed 1989 aggregate production quota of methylphenidate. MD Pharmaceutical wished to advise DEA of its concern over DEA's apparent intention to continuously reduce the aggregate production quota for methylphenidate

even though the public's need for generic methylphenidate is continuing to increase. Also, MD Pharmaceutical urged DEA to consider the increasing need for generic methylphenidate in its establishment of the 1989 production quota. MD Pharmaceutical requested DEA to consider if a reduction in the aggregate production quota for methylphenidate is necessary and whether DEA will permit adequate amounts to be made available to meet patient needs and provide for adequate inventories. Relative to alfentanil, Janssen, Inc. of Puerto Rico commented that based on their marketing forecast and inventory requirements, the 1989 aggregate production quota for alfentanil should be increased.

At this time, DEA has determined that no increases are necessary for the 1989 aggregate production quotas for methylphenidate and alfentanil; however, DEA will reconsider these comments when the established quotas are revised in early 1989. No other comments and no request for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1989 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic Class and Established 1989 Quotas

Schedule I:

2,5-Dimethoxyamphetamine	15,500,000
Lysergic Acid diethylamide	11
3,4-Methylenedioxyamphetamine	5
3,4-Methylenedioxymethamphetamine	10
Tetrahydrocannabinols	20,000
Psilocyn	2
Psilocybin	2
Normorphine	5
4-Methylaminorex	5

Schedule II:

Alfentanil	0
Amobarbital	213,000
Amphetamine	328,000
Cocaine	700,000
Codeine (for sale)	54,135,000
Codeine (for conversion)	4,528,000
Desoxyephedrine	1,318,000
Levodesoxyephedrine	1,281,000
Methamphetamine	37,000
Dextropropoxyphene	78,338,000
Dihydrocodeine	535,000
Diphenoxylate	810,000
Ecgonine (for conversion)	650,000
Fentanyl	40,000
Hydrocodone	2,507,000
Hydromorphone	197,000
Levorphanol	13,600
Meperidine	9,851,000
Methadone	1,441,000
Methadone Intermediate (4-Cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,802,000
Methamphetamine (for conversion)	1,500,000
Methylphenidate	2,061,000
Mixed Alkaloids of Opium	9,200
Morphine (for sale)	3,208,000
Morphine (for conversion)	61,532,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,452,000
Oxycodone (for sale)	2,329,000
Oxycodone (for conversion)	5,200
Oxymorphone	2,500
Pentobarbital	11,777,000
Phencyclidine	31
Phenmetrazine	0
Phenylacetone (for conversion)	617,000
1-Piperidinocyclohexanecarbonitrile (for conversion)	64
Secobarbital	1,288,000
Sufentanil	400
Thebaine	4,782,000

DEA will review the above established quotas early in 1989 to take into consideration actual 1988 sales and actual December 31, 1988 inventories as well as other information which might be available to DEA. At that time, DEA will again consider those comments received in response to the proposal of July 29, 1988.

Dated: September 28, 1988

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-24268 Filed 10-19-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Carbon Monoxide Monitoring Systems for Underground Mines; Public Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration will hold a public meeting to discuss carbon monoxide monitoring systems used in mining.

DATE: The public meeting will be held on October 25, 1988 in Triadelphia, West Virginia at 10:00 a.m.

ADDRESS: The public meeting will be held at the Mine Safety and Health Administration's Approval and Certification Center, Building #2, Room 113, Triadelphia, West Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Chief, Approval and Certification Center, MSHA, phone (304) 547-0400.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to gather and exchange information concerning experience in the field with monitoring systems using carbon monoxide detectors and other early fire warning devices. Since this is an informational meeting concerning the field use of monitoring systems, issues related to ongoing rulemaking projects will not be discussed, nor will questions related to such projects be entertained.

Dated: October 14, 1988.

Patricia W. Silvey

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-24225 Filed 10-19-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

October 13, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held

in Washington, DC on November 17-18, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 17-18, 1988, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 17, 1988, will be as follows:

Committee Meetings

8:30-9:30 a.m.

Coffee for Council Members—Room 527 (Open to the public)

9:30-10:30 a.m.

Committee Meetings—Policy Discussion

Education Programs—Room M-14

Fellowship Programs—Room 316-2

General Programs—Room 415

Research Programs/Preservation

Grants—Room 315

State Programs/Challenge Grants—

Room M-07

10:30 a.m. until Adjourned

(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on November 18, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous

Quarter

D. Final Fiscal Year Reports:

Applications; Matching; and Obligations

E. Fiscal year 1989 Appropriations

F. Committee Reports on Policy and

General Matters

1. Education Programs

2. Fellowship Programs

3. General Programs

4. Research Programs

5. Preservation Grants

6. State Programs

7. Challenge Grants

8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-24222 Filed 10-19-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 21, August 15, and August 25, 1988, the National Science Foundation published notices in the *Federal Register* of permit applications received. Permits were issued to the following individuals on October 11, 1988:

Albert F. Bennett and Zoe A. Eppeley

Gerald L. Kooyman

John L. Bengtson (3 permits)

David F. and Jean M. Parmelee

David G. Ainley (2 permits).

The permit application submitted by Albert F. Bennett and Zoe A. Eppeley was approved by NSF, in part. The permit application was modified by NSF

before approval in order to reduce the conservation impact on bird populations in the vicinity of Palmer Station, Antarctica.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88-24301 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Advanced Scientific Computing; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Advanced Scientific Computing

Date and Time:

November 17—8:00 a.m.—5:00 p.m.

November 18—8:00 a.m.—3:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW.

November 17—8:00 a.m.—5:00 p.m.

Type of Meeting:

Open

November 17—8:00 a.m.—3:15 p.m.

November 18—8:00 a.m.—3:00 p.m.

Closed

November 17—3:15-5:00 p.m.

Contact Person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, Room 417, National Science Foundation, Washington, DC. Telephone: 202/357-7558

Summary Minutes: May be obtained from Contact Person

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing

Agenda:

Closed

To review and evaluate proposals—as part of the selection process for awards

Open

Discussion of Centers supercomputer usage, infrastructure issues, renewal plan and 1988 achievements, service units from other sources, allocations policy, Division issues/future directions and general discussion.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Office.

October 17, 1988.

[FR Doc. 88-24330 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Archaeology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology.

Date and Time: November 21 and 22, 1988, 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 643, Washington, DC 20550

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24320 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Decision, Risk, and Management Science Program; Meeting

The National Science Foundation announces the following meetings:

Name: Advisory Panel for Decision, Risk, and Management Science Program.

Date/Time: November 17-18, 1988—8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Conference Room-546.

Type of Meeting: Closed.

Contact Person: Dr. Howard Kunreuther (202) 357-7569 or Dr. Robin S. Gregory (202) 357-7417, Program Directors for Decision, Risk, and Management Science, Room 336, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Decision, Risk, and Management Science Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24323 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for EXPRES and Related Multimedia Electronic Communication Collaboration Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies

Dates and Times:

November 14, 1988—9:00 a.m.-5:00 p.m.

November 15, 1988—8:30 a.m.-5:00 p.m.

Place: University of Michigan, CSMIL Conference Room, 701 Tappan, Ann Arbor, Michigan 48109

Type of Meeting:

Open

November 14—9:00 a.m.-5:00 p.m.

November 15—8:30 a.m.-3:00 p.m.

Closed

November 15—3:30-5:00

Contact Person: Mr. Donald R. Mitchell, National Science Foundation, Phone: 202/357-9717

Summary of Minutes: May be obtained from Donald R. Mitchell

Purpose of Meeting: To review progress and provide advice and recommendations concerning NSF support and oversight of EXPRES and related technologies

Agenda:

Open

The open session will be focused on the progress to date and planned future milestones of the EXPRES program

Closed

To review and evaluate proposals—as a part of the selection process for awards

Reason for Closing: The pending funding actions being discussed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the projects. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), the Government in Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24329 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Genetics; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and Time: Tuesday, Wednesday, and Thursday, November 8, 9, and 10, 1988 8:30 to 5:00 p.m.

Place: The National Science Foundation, 1800 G. St., NW., Room 1242.

Type Meeting: Closed

Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357-0112

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24326 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for History and Philosophy of Science; Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for History and Philosophy of Science

Date/Time:

November 14, 1988, 9:00 a.m. to 5:00 p.m.

November 15, 1988, 9:00 a.m. to 4:00 p.m.

Place: National Science Foundation, 1800 "G" Street NW., Room 536, November 14th, Room 1243, November 15th

Type of Meeting: Closed

Contact: Ronald J. Overmann, Program Director, Studies in Science, Technology & Society, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9677, Room 312.

Summary: May be obtained from the contact person at the above address.

Purpose of Advisory Meeting: To provide advice and recommendations concerning research in the Studies in Science, Technology & Society Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88-24327 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Information, Robotics, and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Information, Robotics, and Intelligent Systems.

Date and Time: November 21 and 22, 1988, 9:00 to 5:00 daily.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: All Open.

Contact Person: Dr. Y.T. Chien, Division Director, Division of Information, Robotics, and Intelligent Systems, Room 310, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-9572. Anyone planning to attend this meeting should notify Dr. Chien no later than Nov. 14, 1988.

Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning support of research in Information, Robotics, and Intelligent Systems.

Agenda:

Nov. 21—Overview of Programs, Discussions Focusing on Specific Program Aspects.

Nov. 22—Discuss Future Strategy for Programs and Divisional Initiatives, Committee Business Discussion.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88-24324 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Instrumentation and Instrument Development Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Instrumentation, and Instrument Development Program.

Date and Time: November 17 & 18, 1988, 8:30 a.m. to 5:00 a.m.

Place: Washington Plaza Hotel, Massachusetts & Vermont Avenue, NW., Washington, DC 20005. Telephone: 202/842-1300.

Type of Meeting: Closed.

Contact Person: Dr. Sidney Pierce, Program Director, Instrumentation and Instrument Development, National Science Foundation, Room 325, Washington, DC. Telephone: 202-357-7652

Summary Minutes: May be obtained from Contact Person at the above address.

Purpose of Advisory Panel Meeting: To provide advice and recommendations concerning support for research instrumentation.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 88-24325 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Division Advisory Committee for Networking and Communications Research and Infrastructure; Meeting

The National Science Foundation announces the following meeting:

Name: Division Advisory Panel for Networking and Communications Research and Infrastructure.

Dates and Times:

November 29th—9:00 a.m.—5:00 p.m.

November 30th—9:00 a.m.—3:00 p.m.

Place: November 29th and 30th, Room 536, National Science Foundation, 1800 G Street NW.

Type of Meeting:

Open

November 29th—9:00 a.m.—5:00 p.m.

November 30th—12:00 p.m.—3:00 p.m.

Closed

November 30th—9:00 a.m.—12:00 p.m.

Contact Person: Dr. Stephen S. Wolff, National Science Foundation, Phone: (202) 357-9717

Purpose of Meeting: To provide advice and recommendations concerning NSF support of networking and communications research and infrastructure.

Agenda:

Open

November 29, 1988

The sessions will focus on technical, management, research, planning and policy issues. These will include a review of recent actions and budget priorities.

Closed

November 30, 1988, 9-Noon

To review and evaluate research proposals, as part of the selection process for awards.

Open

November 30, 1988, Noon-3

To discuss trends and opportunities in research, and to help provide advice and recommendations concerning support for research in Networking and Communications Research and Infrastructure.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions four and six of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
October 17, 1988.

[FR Doc. 24328 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Physical Anthropology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Physical Anthropology.

Date and Time: November 14 and 15, 1988, 9:00 a.m.—5:00 p.m. each day.

Place: Arizona State University, Tempe, Arizona.

Type of Meeting: Closed.

Contact Person: Dr. Warren G. Kinzey, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357-7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.

Dated October 17, 1988.

[FR Doc. 88-24322 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Political Science; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: November 17 and 18, 1988—

9:00 a.m. to 4:00 p.m. each day.

Place: National Science Foundation, Room 643, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank P. Scioli, Program Director for Political Science, (202) 357-9406, National Science Foundation, Washington, DC 20550, Room 336.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Political Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24319 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sociology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date/Time: November 14 and November 15, 1988, from 8:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, Room 540-B, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Phyllis Moen, Program Director or Dr. Robert Althaus, Associate Program Director for Sociology, Room 336, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7802.

Summary Minutes: May be obtained from the Contact Persons at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Sociology Program.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

October 17, 1988.

[FR Doc. 88-24321 Filed 10-19-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos., 50-295 and 50-304]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-39 and DPR-48, issued to the Commonwealth Edison Company (CECo, the licensee) for Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments to Facility Operating License Nos. DPR-39 and DPR-48, Appendix A, sections 3.2, 3.4, 3.8, and 3.9 would authorize Zion Station to remove Boron Injection Tank (BIT) and the associated piping, valves and heat trace for recirculation between the BIT and the Boric Acid Tanks (BAT).

These revisions to the licenses of Zion Nuclear Power Station, Units 1 and 2 would be made in response to the licensee's application for amendment dated June 9, 1988.

Needs for the Proposed Action

Improvements in the analytical techniques used for the Final Safety Analysis Report (FSAR) accident analyses have shown that the BIT concentration can be reduced or the entire BIT can be removed in Westinghouse nuclear steam supply system plants. The high boric acid concentrations currently required in the BIT pose operational and maintenance problems such as maintaining of minimum volumes and concentrations in boric acid system tanks, heat tracing malfunctions, BIT valve testing, recovery from inadvertent safety injection and entering into technical Specification Limiting Conditions of

Operation to accomplish these repairs. The detrimental consequences of high boric acid concentrations are also factors that contribute to the emergency core cooling system's inoperability.

Environmental Impact of the Proposed Action

The licensee contracted Westinghouse to reanalyze the FSAR accident sequences involving postulated steamline break accidents, the consequences of which are mitigated by BIT. Westinghouse performed the reanalysis using improved analytical techniques and prepared the "Report For The Boron Concentration Reduction/ Boron Injection Tank Elimination For Zion Units 1 and 2" (Report). The Report concluded that Zion Units 1 and 2 may reduce the boron concentration in the BIT to 0 ppm or remove the BIT entirely.

The Commission has reviewed these analyses and finds that potential radiological releases during normal operations, transients, and for accidents would not be increased over those considered in the Final Environmental Statement related to Operation of Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

With regard to potential non-radiological impacts, the proposed amendments involve systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission findings in the Final Environmental Statement related to Operation of Zion Nuclear Power Station Units 1 and 2 dated December 1972, regarding radiological and non-radiological environmental impacts from the plant during normal operation or after accident are not adversely altered by this action.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on September 8, 1988 (53 FR 34849). No request for hearing or petition for leave to intervene was filed following this notice.

Alternate to the Proposed Actions

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Since the Commission has concluded that no significant environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2 dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request of June 9, 1988 and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated June 9, 1988 and the Final Environmental Statement for Zion Nuclear Power Station, Units 1 and 2 dated December 1972, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-24272 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published September 21, 1988

(53 FR 36664). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October and November 1988 ACNW and the November 1988 ACRS full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Mechanical Components, October 26-27, 1988, Bethesda, MD. The Subcommittee will continue to discuss the NRC staff's generic letter on expanded testing and inspection of all safety-related, motor-operated valves. Other valve reliability matters will also be discussed.

Advanced Boiling Water Reactors, November 15-16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detailed ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Reliability Assurance, November 22, 1988, Bethesda, MD. The Subcommittee will continue the discussion of the Equipment Qualification-Risk Scoping Study with special emphasis on peer review comments.

Auxiliary and Secondary Systems, November 22, 1988, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Containment Systems, December 6, 1988, Bethesda, MD. The Subcommittee will review the NRC staff's document on final recommendations for containment performance and improvements (BWR Mark I only).

Thermal Hydraulic Phenomena, December 7, 1988, Bethesda, MD. The Subcommittee will review: (1) The final

report of the NRC-RES Technical Program Group on the Code Scaling, Applicability and Uncertainty (CSAU) Evaluation Methodology and (2) the report of the joint NRC/B&W Technical Advisory Group on the need for follow-on research concerning thermal hydraulic phenomena of the B&W OTSG.

Regional Programs, January 6, 1989 (January 5 p.m. as needed), Region IV Offices, Arlington, TX. The Subcommittee will review the activities under the control of the Regional IV Office.

Improved Light Water Reactors, January 10, 1988, Bethesda, MD. The Subcommittee will review: (1) The proposed final rule, 10 CFR Part 52, Early Site Permits, Standard Design Certification, and Combined Licenses for Nuclear Power Reactors, and (2) the SER for Chapter 5, EPRI Requirements Document.

Auxiliary and Secondary Systems, January 11, 1988, Bethesda, MD. The Subcommittee will discuss Control Air System Design and Operating Experience, and the proposed resolution of Generic Issue 43, "Air Systems Reliability."

Babcock & Wilcox Reactor Plants, February 1 and 2, 1989, Sacramento, CA. The Subcommittee will meet to discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring extended start-up program, as well as, plant and organization changes as a result of the restart effort.

Occupational and Environmental Protection Systems, March 2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

AC/DC Power Systems Reliability, Date to be determined (November), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

General Electric Reactor Plants (Peach Bottom Restart), Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Advanced Reactor Designs, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the draft SER for the Sodium Advanced Fast Reactor (SAFR) design.

Advanced Pressurized Water Reactors, Date to be determined (December), Bethesda, MD. The Subcommittee will discuss the

comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Advanced Pressurized Water Reactors, Date to be determined (December), Bethesda, MD. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Instrumentation and Control Systems, Date to be determined (December), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined (December/January), Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

Decay Heat Removal Systems, Date to be determined (January), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

ACRS Full Committee Meetings

November 17-19, 1988—Items are tentatively scheduled.

A. Peach Bottom Nuclear Plant (Open)—Discuss proposed restart of this plant.

B. Operator Requalification (Open)—Briefing regarding lessons learned from implementation of revised operator requalification methodology (Draft Examiner Standard 601).

C. Westinghouse Advanced PWR (RESAR SP/90) (Open/Closed)—Review the proposed design features of this standardized nuclear steam supply system.

D. Generic Issue 128, Electrical Power Reliability (tentative) (Open)—

Review and comment regarding proposed resolution of this generic issue.

E. Regulatory Guide EE 006-5, Qualification of Safety-Related Lead Storage Batteries (Open)—Review and comment on this proposed regulatory guide.

F. Report of ACRS Nominating Committee (Closed)—Discuss qualifications of candidates proposed for election as ACRS Officers for CY-1989.

G. Liquid Metal Cooled Reactor (Open)—ACRS review and comment regarding proposed design features of the liquid metal cooled Power Reactor Inherently Safe Module (PRISM).

H. Quantitative Safety Goals (Open)—Review and comment on the proposed NRC staff plan for implementation of the NRC Safety Goal Policy.

I. Nuclear Reactor Operating Experience (Open/Closed)—Briefing regarding systematic assessment of nuclear power plant operating experience and abnormal events.

J. Nuclear Power Plant Valve Testing (Open/Closed)—Review and comment regarding proposed changes in NRC requirements for in-situ testing of motor-operated valves in nuclear power plants.

K. Hierarchical Structure for Safety-Related Issues (Open)—Discuss proposed hierarchical structure for certain issues identified by the ACRS members in the areas of ACRS procedures and practices and NRC Regulatory practices.

L. Misrepresented Equipment in Nuclear Power Plants (Open)—Briefing regarding NRC staff activities related to the supply and use of misrepresented equipment in nuclear power plants.

M. Anticipated ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activity and topics proposed for consideration by the full Committee.

N. ACRS Subcommittee Activities (Open)—Hear and discuss reports of designated ACRS Subcommittee Chairmen and members regarding the status of assigned safety-related activities.

December 15-17, 1988—Agenda to be announced.

January 12-14, 1989—Agenda to be announced.

ACNW Meetings

October 27, 1988—2nd ACNW Meeting with the Commissioners. The Committee will review topics scheduled for discussion with the Commission later in the day. Following the meeting with the Commissioners the Committee may reconvene to discuss the outcome of the Commission meeting, and ACNW

plans, schedules, and procedures in general.

November 3-4, 1988—Postponed.

Date: October 14, 1988.

Andrew L. Bates,
Acting Advisory Committee Management Officer.

[FR Doc. 88-24266 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Temporary Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission's (NRC) local public document room (LPDR) for Sacramento Municipal Utility District's Rancho Seco Nuclear Generating Station has been temporarily moved from the Sacramento Public Library to the Martin Luther King Regional Library, Sacramento, California.

The relocation will be in effect for approximately two years while extensive renovations are made to the Sacramento Public Library. Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Rancho Seco Nuclear Generating Station at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95882. The Library is open on the following schedule: Monday noon to 9 p.m.; Tuesday and Thursday 10 a.m. to 9 p.m.; Wednesday 10 a.m. to 6 p.m.; Friday 1 p.m. to 5 p.m.; and Saturday 10 a.m. to 5 p.m.

For further information, interested parties in the Sacramento area may contact the LPDR directly through Ms. Bess Chen, telephone number (916) 421-3151. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20555, telephone number (202) 634-3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Rancho Seco LPDR should be addressed to Ms. Jona L. Souder, LPDR Program Director, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638-8081 toll-free.

Dated at Bethesda, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.
 Donnie H. Grimsley,
*Director, Division of Freedom of Information
 and Publications Services, Office of
 Administration and Resources Management.*
 [FR Doc. 88-24270 Filed 10-19-88; 8:45 am]
 BILLING CODE 7590-01-M

[Docket No. 50-293]

**Boston Edison Co., (Pilgrim Nuclear
 Power Station); Exemption**

I

The Boston Edison Company (BECO), the licensee, is the holder of Operating License No. DPR-35 which authorizes operation of Pilgrim Nuclear Power Station. The license provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.G.2.a, is the subject of the licensee's exemption request.

Subsection III.G.2.a of Appendix R to 10 CFR Part 50, requires that separation of cables and equipment and associated non-safety trains by a fire barrier having a three hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

III

By letter dated August 6, 1988, BECO requested an amendment to revise the license to allow some fire barriers to have a rating of less than three hours as referenced in License Condition 3.F and supported by Fire Protection Engineering Evaluations (FPEE) performed by BECO. The NRC staff has determined that these barriers do not fully satisfy the requirements of section III.G.2.a of Appendix R to 10 CFR Part 50 in relation

to three hour fire barriers and an exemption is required in addition to the requested amendment.

The Safety Evaluation Report (SER) that accompanied Pilgrim Nuclear Power Station (PNPS) Technical Specification Amendment No. 35 documented PNPS compliance with Appendix A of Branch Technical Position (BTP) APCS 9.5-1. Section 4.13 of the SER identified the fire barriers that provide three hour separation between redundant safety related systems, or separation of areas with significant fire hazards.

During refueling outage number seven, a reevaluation was conducted of fire barriers, including fire doors, fire dampers and penetration seals. This review determined that existing documentation would not support verification of a three hour rating for some of the barriers referenced in the SER. As a result, FPEEs were performed to determine the adequacy of these fire barriers. The FPEEs consist of the following elements: Area configuration and occupancy; combustible loading; safe shutdown systems potentially affected; consequences of a fire in an affected area; other considerations (i.e., detection, suppression purpose of barrier, etc.) and; the review and approval of a fire protection engineer.

The staff has previously reviewed and approved the concept of FPEEs to document the adequacy of fire protection measures at PNPS when the existing configuration was otherwise not in strict compliance of Appendix R requirements. For all but two of the 17 fire barriers that are the subject of this exemption, the licensee's analysis by FPEEs find that they have a rating that exceeds the fire hazard to which the barriers are exposed. That is, the combustible loading, extent and nature of combustibles, and their continuity (all expressed in British Thermal Units) do not exceed the fire rating of the barrier being analyzed and the existing fire barriers provide adequate protection. The remaining two fire barriers separate a fuel oil day tank, and the turbine lube oil reservoir and storage areas from surrounding equipment. The fire hazard for each of these locations exceeds even a three hour fire barrier because of their high combustible loading. However, these two areas are provided with automatic fire suppression and fire detection which provide adequate protection for the areas.

Based on the above evaluation, the staff concludes that application of the

regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. The licensee's existing fire protection configuration provides an equivalent level of protection to that achieved by compliance with section III.G.2.a of Appendix R.

Therefore, an exemption to the requirements of section III.G.2.a of Appendix R in relation to the need for three hour fire rated barriers should be granted.

IV

Accordingly, the Committee has determined, pursuant to 10 CFR 50.12(a), that: (1) The 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 in that application of the regulation is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption from the requirements of section III.G.2.a of Appendix R to 10 CFR Part 50 regarding the separation of cables and equipment and associated non-safety trains by a fire barrier having a three hour rating.

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 40146). A copy of the licensee's submittal dated August 6, 1988, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission,
 Steven A. Varga,

*Director, Division of Reactor Projects I/II,
 Office of Nuclear Reactor Regulation.*

[FR Doc. 88-24271 Filed 10-19-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26188; File No. SR-DTC-88-16]

Self Regulatory Organizations; Depository Trust Co.; Order Granting Temporary Approval of Proposed Rule Change Concerning Memo Segregation

On August 1, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-88-16), with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("the Act"), 15 U.S.C. 78s(b)(1).¹ On August 22, 1988, the Commission published notice to solicit comments from interested persons and granted accelerated temporary approval of this proposed rule change.² No comments were received. This Order temporarily approves the proposal for 21 days.

The proposal would authorize DTC to establish a new method for participants, particularly broker-dealer participants, to segregate fully-paid-for customer securities against unintended delivery by creating a "memo" position within a participant's free account. This "memo" position allows participants to protect from unintended delivery a designated quantity of customer fully-paid-for securities that are in the participant's free account or that may be received during the daily processing cycle. Securities would remain in the memo position until the participant provides DTC with new instructions to remove them from the memo position or until the participant reduces the position by executing eligible transactions that are normally customer transactions. Withdrawals-by-transfer, certificate-on-demand withdrawals, and free deliver orders that are not identified as stock loan or stock loan returns would be considered eligible transactions which would be used to reduce the securities in both the memo position and the free account position.³

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act in that it is designated to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. DTC believes that implementing this service will assist

broker-dealers in complying with Commission Rule 15c3-3. In addition, DTC stated that the participants which have used this service during the pilot period believe that it improved their ability to comply with Commission Rule 15c3-3 by increasing the number of automated deliveries which can be made without violating the Rule 15c3-3 requirements.

In its August 22, 1988, notice and temporary approval order, the Commission stated it preliminarily believes that the proposal is consistent with the Act, and in particular, section 17A. The Commission also stated that it agrees with DTC that the memo segregation service, as proposed, potentially could improve broker-dealers' ability to safeguard customer securities and thus comply with Rule 15c3-3. Before granting final approval, however, the Commission believes it needs more time to evaluate the memo segregation pilot program. In order to evaluate this pilot, the Commission is extending approval of memo segregation for 21 days.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-88-16) be, and hereby is, temporarily approved until November 4, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24298 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26185; File No. SR-NASD-88-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Offering of Non-Cash Sales Incentives as Inducement To Sell Interests in Direct Participation Programs

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 5, 1988, copies of a proposed rule change ("proposed rule change" or "proposal") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend sections 5(e) and 5(f) of Appendix F to Article III, section 34 of the NASD's Rules of Fair Practice. Section 34(b) of the NASD's Rules of Fair Practice requires that compensation paid to members and associated persons

in connection with their participation in the public offering of a direct participation program ("DPP")¹ be "fair and reasonable." Section 5 of Appendix F sets forth the types of compensation which will be deemed fair and reasonable pursuant to section 34(b). The amendment to section 5(e) generally prohibits members and associated persons from directly or indirectly accepting non-cash sales incentive items offered as an inducement to sell interests in DPPs, from DPPs, sponsors of DPPs, or affiliates of those sponsors (collectively, "sponsors").² The amendment, however, permits the member, itself, to provide non-cash sales incentive items to its associated persons in connection with an in-house sales incentive program, provided that no sponsor "directly or indirectly participates in or contributes to providing such non-cash sales incentive item." In this connection, the NASD interprets the word "sponsor" to apply both to sponsors who are affiliated with members and to those who are not affiliated with members.

The amendment to section 5(f) clarifies that subpart (f) applies to cash compensation of any kind (whereas subpart (e) applies to non-cash sales incentive items). It specifies that a member may receive cash compensation from sponsors under certain conditions, "subject to the limitations on direct and indirect non-cash sales incentives" set forth in amended section 5(e). The amendment adds, as a condition to the member's acceptance of cash compensation, that the compensation must not be "directly or indirectly related to any non-cash sales incentive item provided by the member to its associated persons" (section 5(f)(5)).³

¹ Article III, section 34(d)(2) of the NASD's Rules of Fair Practice defines "direct participation program" as a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are, *inter alia*, real estate investment trusts and investment companies registered pursuant to the Investment Company Act of 1940. *NASD Manual* § 2192, at 2160.

² The one exception to this general prohibition permits an associated person to accept, from each sponsor, non-cash sales incentives with an aggregate value of \$50.00 or less per year (section 5(e)(1-3)).

³ The Commission also is approving at this time proposed rule change SR-NASD-88-13, which prohibits members and associated persons from accepting non-cash sales incentives in excess of \$50 per person per issuer annually, in connection with

Continued

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 26000 (August 16, 1988), 53 FR 31947.

³ DTC presumes that these activities are customer transactions and, therefore, once satisfied from a participant's free account position, are no longer anticipated customer securities that need protection.

Sponsors of DPPs are of two general types: Those who are affiliated with a broker-dealer and those who are not. Both categories of sponsors typically offer their DPPs through a network of broker-dealers; in the case of an affiliated sponsor, that network includes the broker-dealer with which the sponsor is affiliated. The NASD asserts that both categories of sponsors offer non-cash sales incentives to NASD member broker-dealers, to be distributed to the members' associated persons as bonuses for the sale of particular DPP products. These non-cash sales incentive programs may be particularly important for non-affiliated sponsors because these sponsors often lack any formal relationship with a particular member. Instead, they rely on sales incentive programs to encourage associated persons of broker-dealers to sell their products. In this manner, the unaffiliated sponsors can avoid the costs connected with employment of a sales force.

Non-cash sales incentives offered by DPP sponsors (both affiliated and non-affiliated) customarily take the form of luxury merchandise or exotic trips. An associated person becomes eligible to receive the sales incentive item by exceeding designated dollar amounts of sales for the product offered by the sponsor. The dollar amount of sales required to trigger eligibility for a particular sales incentive item increases proportionately with the perceived value of that item.

The proposed rule change would prohibit a practice in which sponsors provide sales incentives and bonuses indirectly to associated persons. Current sections 5 (e) and (f) prohibit the offering of non-cash sales incentive items *directly* to associated persons of members, but permit non-cash sales incentives and bonuses to be offered indirectly to those associates, through cash payments made by the sponsor of the DPP to the member, which the member then applies to satisfy the requirements for the non-cash award offered by the sponsor. When an associated person meets the requirement for a particular award, the award is provided by the sponsor to the qualified associated person. The proposal would eliminate this indirect form of providing non-cash sales incentives to associated persons, on the ground that such non-cash sales incentive programs offered by sponsors undermine the members' ability to supervise and control their sales forces.

distributions of public offerings of securities. See Securities Exchange Act Release No. _____ (September _____, 1988).

As noted above, the proposal permits members to continue offering in-house, non-cash sales incentive programs to their associated persons, provided that sponsors are prohibited from participating in or contributing to, those programs. Thus, under amended section 5(e), sponsors may not dictate the products the associated person must sell to qualify for the member-sponsored sales incentive, nor may sponsors participate in the selection of and arrangements for, any sales incentive provided by members to their associated persons. Further, sponsors may not contribute monetarily to any sales incentives offered by members to their associates. These prohibitions against the participation of sponsors in members' in-house sales incentive programs apply both to sponsors who are affiliated with members and to sponsors who are not affiliated with members.⁴

The Commission has twice sought comment on the proposal. First, on August 13, 1986, it published notice of the original proposal together with the terms of substance of the proposal in Securities Exchange Act Release No. 23527 (August 13, 1986) and in the *Federal Register* (51 FR 29729, August 20, 1986). Second, in response to an amendment filed by the NASD on August 10, 1987,⁵ the Commission published notice of the amended proposal in Securities Exchange Act Release No. 24995 (October 5, 1987) and in the *Federal Register* 52 FR 38160, October 14, 1987.⁶

⁴ The proposal, however, does permit payment by sponsors for travel expenses incurred by members and their associated persons when attending training or educational meetings held in the city or place where the main office of a sponsor is located, or when making "due diligence" trips to inspect the sponsor itself or the properties owned and/or managed by the sponsor. See SR-NASD-88-22, at 26-27.

⁵ The NASD filed three amendments to its original proposal with the Commission, on the following dates: (1) May 15, 1987; (2) August 10, 1987; and (3) March 22, 1988. These amendments, respectively: (a) Amend section 5(e) to provide that members' in-house sales incentive programs are permissible subject to the condition that sponsors neither participate in nor contribute to, those programs; (b) amend section 5(f) to clarify that that section applies to cash compensation only and to clarify that members may not require sponsors to reimburse the expenses of managing and funding in-house sales incentive programs; and (c) amend section 5(e) to specify that the prohibition encompassed in that section is intended to apply to non-cash sales incentive items, and is not intended to prohibit a member or associated person from receiving non-cash compensation in the form of securities for its participation in the public offering.

⁶ The Commission's notice of October 5, 1987 solicited comment on the revisions made in the May and August amendments. The Commission did not solicit comment on the March 22, 1988, amendment because that amendment merely conformed the language of section 5(e) to the original intent of the NASD drafting committee.

The Commission received 24 letters of comment on the proposal.⁷ Four commentators supported the proposal,⁸ and the remaining commentators opposed the proposal. Commentators favoring the proposal agreed with the NASD that non-cash sales incentive programs other than in-house programs operated by the members themselves deprive members of supervisory control over their own sales forces to the detriment of public investors, and should be prohibited. Commentators opposing the proposal generally argued that: (1) Members should not be

⁷ See letters from: (1) Alexander J. Jordan, Jr., Gaston Snow & Ely Bartlett, to Secretary, Securities and Exchange Commission ("Secretary") (November 2, 1987); (2) John R. Schmidt, Skadden, Arps, Slate, Meagher & Flom, to Secretary and Exchange Commission ("Commission") (November 3, 1987, September 11, 1986); (3) Edward L. O'Brien, President, Securities Industry Association, to Secretary (December 21, 1987); (4) William C. Roney, III, Director, Tax Advantaged Investments, Roney & Co., to Secretary (February 4, 1988); (5) Henry I. Montgomery, C.F.P., President, Planners Financial Services, Inc., to Secretary (February 5, 1988); (6) Gary Nিকে, Senior Vice President and General Counsel, JMB Realty Corporation, to Commission (November 3, 1987, September 11, 1986); (7) Michael P. Némlich, Senior Vice President, Oberweis Securities, to Secretary (November 17, 1987); (8) Monique E. Yingling, Zuckert, Scoutt & Rasenberger, to Secretary (January 22, 1988); (9) Hewitt H. Covington, General Counsel, International Association for Financial Planning, to Secretary (January 5, 1988); (10) J. Benson Coulter, Jr., C.F.P., Chairman, Institute Regulatory Committee, Institute of Certified Financial Planners, to Kathryn V. Natale, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (January 15, 1988); (11) Thomas W. Hutchins, Senior Vice-President, FSC Securities Corporation, to Secretary (February 1, 1988); (12) Stephen Z. Monheim, Executive Vice President, Butcher & Singer, Inc., to Secretary (February 1, 1988); (13) Thomas J. Mulvaney, C.F.P., Chief Operating Officer, John G. Kinnard & Co., to Secretary (January 28, 1988); (14) Miles S. Gordon, President and CEO, Financial Network Investment Corporation, to Secretary (November 2, 1987); (15) Walter H. May, Marketing Director, Piper, Jaffray & Hopwood, to Secretary (November 25, 1987); (16) Thomas A. James, Chairman, RJ Financial Corporation, to Secretary (September 5, 1986, April 18, 1988); (17) David W. Dalton, President, Real Estate Securities and Syndication Institute ("RESSI"), to Kathy England, Branch Chief, Division of Market Regulation, Securities and Exchange Commission (October 17, 1986); (18) Harry Greensfelder III, Senior Vice President, the Nooney Company, to Kathy England, (October 22, 1986); (19) Phillips Montross, President, Private Ledger Financial Services, Inc., to Secretary (April 6, 1988); (20) Richard W. Brescoll, Senior Vice President, First of Michigan Corp., to Secretary (March 8, 1988); and (21) Christopher J. Sutherland, Executive Director, Promotion Marketing Association of America, Inc., to Secretary (March 11, 1988).

⁸ See letters from: (1) Henry I. Montgomery, Planners Financial Services, Inc., to Secretary (February 5, 1988); (2) Hewitt H. Covington, International Association for Financial Planning, to Secretary (January 5, 1988); (3) Thomas A. James, RJ Financial Corporation, to Secretary (September 5, 1986); and (4) Harry Greensfelder III, the Nooney Company, to Kathy England, Securities and Exchange Commission (October 17, 1986).

prohibited from accepting non-cash sales incentives offered by DPP sponsors because to do so would deprive members of the discretion, which they currently exercise, to approve or disapprove sales incentive programs as they see fit; and (2) the proposed amendment discriminates against sponsors not affiliated with members.⁹

The primary objection of the commentators was that, rather than prohibit non-cash sales incentives, the NASD should simply require further disclosure. For example, the SIA argued that a member should remain free to accept non-cash sales incentives from DPP sponsors subject to the conditions that: (1) The member fully disclose its participation in the program; and (2) a management designee of the member formally approve the program for participation by associates of the members.¹⁰

The NASD, however, contends that the prohibition against the acceptance of non-cash sales incentives encompassed in the proposal is necessary and appropriate because the current regulations, adopted in April 1984,¹¹ have proven insufficient to arrest the direct solicitation of associated persons by sponsors of DPPs. Specifically, the NASD has found that:

[D]espite the April, 1984 amendments to Appendix F, supervisory control of associated persons by members remained a serious problem because, among other things, sponsors generally utilize direct appeals to registered representatives, making it difficult for members to adequately control the participation of their registered representatives in non-cash sales incentive programs.¹²

⁹ In addition, some of the commentators expressed the view that any prohibition on members' acceptance of non-cash sales incentive items provided as bonuses for the sale of DPPs should be extended to prohibit the acceptance of sales incentives given as bonuses for the sale of investment company and variable contract products as well. As discussed *infra*, the NASD has sought member comment on such a prohibition (see *Notice to Members* 88-17, March 1, 1988). As yet, however, the NASD has not filed with the Commission a proposed rule change that would implement that prohibition.

¹⁰ SIA letter, at 3. See letters from: (1) Oberweis Securities; (2) Zuckert, Scoutt & Rasenberger; (3) FSC Securities Corporation; (4) Butcher & Singer, Inc.; (5) John G. Kinnard & Co.; (6) Piper, Jaffray & Hopwood; (7) International Association for Financial Planning; and (8) Gaston Snow & Ely Bartlett.

¹¹ Current sections 5(e) and (f) of Appendix F were approved by the Commission on April 11, 1984. Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041.

¹² SR-NASD-86-22, at 9.

Indeed, the NASD has concluded that the very structure of the sales incentive programs offered by sponsors deprives the member of control over its associates' participation in those programs. The member has no control over the nature of the sales incentives offered to its associates. It plays no part in selecting the DPP products whose sales will trigger eligibility for the sales incentive bonus. Finally, it has no control over the sales literature that sponsors distribute to associated persons in an effort to advertise certain bonuses.

Moreover, the NASD has concluded that sales incentives in the public market for DPPs have become so prevalent that many members are not in a position to refuse to pass on non-cash sales incentives to their associated persons. The NASD has found that associates attracted by a particular sales incentive program often seek to induce their employer to participate in the sales incentive program;¹³ further, there is sometimes an implicit or explicit threat that those associated persons will seek employment elsewhere should the employer decline to participate.¹⁴ In light of this threat of defections by associated persons should the member not adopt a particular program, the NASD believes that its members do *not* in fact have discretion to refuse to permit associated persons to participate in non-cash incentive programs offered by sponsors.¹⁵

The Commission recognizes the serious questions raised by an absolute ban on non-cash sales incentives. Nevertheless, in weighing whether such a ban is necessary and appropriate under the Act the Commission believes that the NASD has appropriately considered alternative approaches. The Commission does not disagree with the NASD's conclusion that, based on the NASD's experience in the last four years, a disclosure approach would not prove effective. Accordingly, the Commission believes it is appropriate to defer to the NASD's judgment that the proposed prohibition is necessary to restore to its members supervisory control over the participation of their associated persons in non-cash sales incentive programs.

The second objection voiced by the commentators was that the proposed

amendment discriminates against independent sponsors and in favor of sponsors affiliated with members.¹⁶ The commentators' concern is premised on the view that: (1) The NASD will be unable to detect instances in which an affiliated sponsor contributes monetarily to, or otherwise influences, a member's in-house sales incentive program; and (2) members will structure their sales incentive programs to reward associates for sales of proprietary products only, even if the affiliated sponsor is effectively prohibited from participating in the member's sales incentive program.¹⁷

The essence of this objection is not that the proposed amendment, if enforced, would have a discriminatory impact; rather, the objection is that the proposed amendment is unenforceable. In this regard, the NASD has assured Commission staff that it intends to monitor member compliance with the proposal by policing the separation between the operations of its members and their affiliates to ensure that a sponsoring affiliate does not influence an in-house sales incentive program adopted by a member.¹⁸ Indeed, the NASD has developed procedures to test the effectiveness of the procedures adopted by member firms to divorce the operations of the firms from those of the firms' affiliates.¹⁹

Further, the NASD notes that the compensation structures of its members are not susceptible to the kind of abuse that could afford a competitive advantage to DPP products sponsored by affiliates of members. The NASD has found that the in-house sales incentive programs sponsored by its members are generally structured to reward associates for sales of a variety of products, not just for sales of the proprietary product sponsored by the member's affiliate.²⁰ The NASD has stated that:

¹⁶ See letters from: (1) JMB Realty Corporation, at 1-4; (2) Gaston Snow & Ely Bartlett, at 1-3; and (3) Skadden, Arps, Slate, Meagher & Flom, at 1-3.

¹⁷ See: (1) JMB letter, at 2; (2) Gaston, Snow letter, at 2; and (3) Skadden, Arps letter, at 2.

¹⁸ Telephone conversation between Suzanne E. Rothwell, Associate General Counsel, NASD, and Gordon K. Fuller, Special Counsel, Division of Market Regulation, SEC, on April 9, 1988.

¹⁹ See NASD, *Final Report of the Regulatory Review Task Force*, at 9 (March 1988).

²⁰ As far as the NASD is aware, the only sales incentive programs designed to reward associates solely for the sales of proprietary DPPs, are those managed by members who sell only that proprietary DPP. These members necessarily award sales incentives only for the sale of that product. Telephone conversation between Suzanne Rothwell and Gordon Fuller, April 6, 1988.

¹³ Letter from Frank J. Formica, Vice President, Corporate Financing Department, National Association of Securities Dealers, Inc., to Michael J. Simon, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, at 2.

¹⁴ Letter from Planners Financial Services, Inc., at 5-7.

¹⁵ SR-NASD-86-22, at 9.

[I]t is general industry practice among large general securities firms to provide non-cash compensation based on *total sales of all securities products* sold through the member rather than having compensation directly related to one type of security or product (emphasis added).²¹

Within such a compensation structure, performance awards are:

based on the annual amount of gross commissions earned or sales generated by each account executive for *any* security. [T]he non-cash compensation is intended to recognize those account executives within the member that contribute the most to the member's success, *without consideration of the particular security sold* (emphasis added).²²

Hence, as long as affiliated sponsors are prohibited from influencing the member's compensation structure, there is little opportunity for discrimination.

Accordingly, the Commission has determined that, in view of the NASD's commitment to enforce the terms of the proposal, and in light of the nature of the compensation structures in place at its member firms, the proposal is not susceptible to being administered in a fashion that would produce a discriminatory effect.²³

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19 (b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

²¹ SR-NASD-86-22, at 20.

²² Letter from Suzanne E. Rothwell to Gordon K. Fuller, dated April 20, 1988.

²³ Finally, to provide consistency of regulation with respect to non-cash sales incentives, the NASD has disseminated for member comment a proposed amendment to Article III, sections 26 and 29 of its Rules of Fair Practice that would prohibit members and their associates from accepting non-cash sales incentives offered by underwriters, investment companies, advisers to investment companies, or their affiliates in connection with sales of investment company and variable contract products. [Notice to Members 88-17 (March 1, 1988)]. Further, as noted above, the NASD has filed with the Commission a proposed amendment to the Corporate Financing Interpretation of Article III, section 1 of the Rules of Fair Practice, that would similarly prohibit the acceptance of non-cash compensation in connection with the distribution of any public offering of securities. The Commission is approving that proposed rule change concurrently with this one. See Securities Exchange Act Release No. 26186 (October 14, 1988).

Dated October 14, 1988.

Shirely E. Hollis,

Assistant Secretary.

[FR Doc. 88-24296 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26186; File No. SR-NASD-88-13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Non-cash Sales Incentives

On April 7, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder, to add a provision to the NASD's Interpretation of the Board of Governors-Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice ("Interpretation"), to prohibit members and associated persons from accepting non-cash sales incentives in excess of \$50 per person per issuer annually in connection with distributions of public offerings of securities.² The proposed rule change also includes a provision that provides an exception to the foregoing prohibition for members' in-house sales incentive programs. The proposed rule change states that, notwithstanding the proposed restrictions on non-cash sales incentives, a member may provide non-cash sales incentive items to associated persons provided that no issuer, affiliate of the issuer, including specifically an affiliate of the member, directly or indirectly, participates in or contributes to providing such non-cash sales incentive.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25636, May 2, 1988) and by publication in the *Federal Register* (53 FR 16486, May 9, 1988). No comment letters were received with respect to the proposed rule change.³

¹ 15 U.S.C. 78s(b)(1).

² The NASD previously submitted SR-NASD-86-22 which the Commission also is approving at this time. The proposed rule change generally prohibits members and associated persons from accepting non-cash sales incentives from sponsors of direct participation programs ("DPPs") as an inducement to sell interests in those DPPs. See Securities Exchange Act Release No. 26185 (October 14, 1988).

³ On the other hand, with respect to the NASD's proposal prohibiting the acceptance of non-cash sales incentives in connection with the sale of DPPs (SR-NASD-86-22), the commission received 24 comment letters. The substance of these comment

Background

The NASD developed the proposed rule change as part of a series of proposals respecting the use of non-cash sales incentives in connection with the sale of securities.⁴ Both the Direct Participation Programs and Real Estate committees of the NASD had expressed concern that the emphasis given to non-cash sales incentives undermines a member's ability to supervise its sales persons; therefore, they recommended that Appendix F be amended to prohibit the practice. In addition, the two committees believed that the proposed prohibition on the use of non-cash sales incentives in connection with the sale of DPPs, should be extended to other product areas and the issue was referred to the Investment Companies, Variable Contracts, and Corporate Financing committees.

The present proposal would prohibit the use of non-cash sales incentives in connection with the sale of real estate investment trusts ("REITs"), and, debt or equity corporate offerings, which are not covered by the provisions of Appendix F, which governs the sale of DPPs.

The NASD believes that certain changes in the tax laws embodied in the Tax Reform Act of 1986 and other factors in the real estate market have led to a marked increase in the number of publicly offered REITs in late 1986 and in 1987 in comparison to DPPs. Further, sales of REITs are considered to be in competition with sales of DPPs. In many cases, REITs are sponsored by members or affiliates of members that previously confined their activities to the sale of DPPs. The sales incentives that have been utilized with respect to the distribution of REITs and DPPs are similar, although sales incentives are not used as frequently in connection with the sale of REITs. In comparison, sales incentives have not traditionally been employed in connection with the distribution of corporate debt and equity offerings. Although sales incentives do not currently appear to be a significant problem in connection with the sale of corporate offerings, the NASD has determined to adopt the proposed rule

letters is discussed in the parallel order approving that proposal.

⁴ The first proposal, SR-NASD-86-22, governs the use of non-cash sales incentives in connection with the sale of DPPs. See *supra* note 2. The NASD's Board of Governors also issued a Notice to Members (Notice to Members 88-17 (March 1, 1988)) proposing to amend Article III, sections 25 and 29 of the NASD Rules of Fair Practice, to prohibit the receipt of non-cash compensation in connection with sales of investment company and variable contract securities. The NASD is reviewing the comments received in connection with the Notice to Members.

change to avoid problems in the future with respect to corporate offerings and in light of several complaints that have been received from members with respect to sales incentive programs for REITs.

Moreover, the NASD believes that, as with its proposal regarding DPPs, the proposed rule change will strengthen the ability of members to supervise their associated persons by prohibiting the payment of non-cash sales incentives, thereby providing greater protection to the public. In addition, the NASD believes that it is appropriate to establish a uniform policy regarding non-cash sales incentives across product lines to avoid such incentive programs being created for different products.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 14, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24297 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 14, 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:

Elsinore Corporation

Common Stock, No Par Value (File No. 7-3940)

Huffy Corporation

Common Stock, \$1 Par Value (File No. 7-3941)

International Telecharge, Inc.

Common Stock, \$0.01 Par Value (File No. 7-3942)

Zweig Total Return Fund, Inc.

Common Stock, \$0.001 Par Value (File No. 7-3943)

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 November 4, 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24299 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16597; File No. 812-7061]

Financial Horizons Life Insurance Co., et al.; Application

October 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Financial Horizons Life Insurance Company ("Financial Horizons"), Financial Horizons VA Separate Account-I ("Separate Account-I") and Nationwide Financial Services, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of Separate Account-I of a mortality and expense risk charge imposed under certain variable annuity contracts.

Filing date: The application was filed on July 6, 1988 and amended on September 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application

will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on November 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Financial Horizons, Separate Account-I and Nationwide Financial Services, Inc., One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT:

Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Financial Horizons is a stock life insurance company incorporated under the laws of Ohio. Separate Account-I, registered as a unit investment trust under the 1940 Act, was established to fund certain Individual Deferred Variable Annuity Contracts (the "Contracts") issued by Financial Horizons. Nationwide Financial Services, Inc., will serve as the general distributor for the Contracts.

2. No sales charge is deducted from purchase payments made under the Contracts. A contingent deferred sales charge (CDSC) may be assessed against contract values upon surrender. The time from receipt of each purchase payment to the time of surrender determines the amount of the CDSC. The declining CDSC is in the maximum amount of 7% of a purchase payment, declining to 0% after the 7th year.

3. An annual Contractor Maintenance Charge of \$30 is deducted from the contract value, as well as an administration Charge equal on an annual basis to .05% of the daily net asset value of the Variable Account. The 0.5% Administration Charge is deducted

during both the "pay-in" accumulation phase and the "pay-out" annuity phase. Financial Horizons relies upon Rule 26a-1 to assess both the Contract Maintenance Charge and the Administration Charge. In this regard, Financial Horizons will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses without profit.

4. Financial Horizons will assess a mortality and expense risk charge at an annual rate of 1.25% of the value of Separate Account-I. Of this amount, .80% represents mortality risks and .45% represents expense risks.

5. The expense risk Financial Horizons assumes is the guarantee that the annual Contract Maintenance Charge and the Administration Charge will never be increased regardless of actual expense it incurs. The mortality risk Financial Horizons assumes is twofold: (1) The annuity risk of guaranteeing to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (2) the guaranteed minimum death benefit risk assumed by Financial Horizons in connection with its promise to return, at a minimum, the contract owner's purchase payments upon death even if the investment experience in Separate Account-I has eroded the contract owner's principal investment. The annuity risk is present in the form of annuity purchase rates that are guaranteed at issue for the life of the contract. The mortality is estimated using average mortality rates determined by the 1971 Individual Annuity Table with ages set back one year. There is also the risk that the average life expectancy of the entire population may grow longer.

6. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by Financial Horizons; conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be a profit to Financial Horizons. Should the charge result in a profit to Financial Horizons, it will become part of its General Account surplus.

7. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. This representation is based upon Financial Horizons' analysis of publicly available information of other insurance companies of similar size and risk ratings offering similar products. Financial Horizons will maintain, available to the Commission, a

memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Nationwide also maintains a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge, given the risks assumed under the Contracts. This memorandum will be made available to the Commission upon request.

8. The application states that the proceeds from the imposition of the CDSC may not be sufficient to cover all explicit sales expenses. Financial Horizons represents that there is a reasonable likelihood that Separate Account-I's proposed distribution financing arrangement will benefit Separate Account-I and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be made available to the Commission upon its request.

9. The application states that the investments of Separate Account-I will be made in investment companies which, if they should adopt any distribution financing plan under Rule 12b-1 under the 1940 Act, will be made up of a Board of Trustees and Directors, the majority of which will be "disinterested" as defined by the Act. Such Board of Directors of Trustees must formulate and approve any such distribution plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24233 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16598; File No. 812-7112]

Nationwide Life Insurance Co., et al.; Application

October 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Nationwide Life Insurance Company ("Nationwide"), Nationwide Multi-Flex Variable Account ("Variable Account"), and Nationwide Financial Services, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the deduction from the assets of the Variable Account of a mortality and

expense risk charge imposed under certain variable annuity contracts.

Filing date: The application was filed on September 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on November 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Nationwide, the Variable Account, and Nationwide Financial Services, Inc., One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT:

Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Clifford E. Kirsch, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Nationwide is a stock life insurance company incorporated under the laws of Ohio and admitted to do business in all states and the District of Columbia. The Variable Account, registered as a unit investment trust under the 1940 Act, was established to fund certain Individual Deferred Variable Annuity Contracts (the "Contracts") issued by Nationwide. Nationwide Financial Services, Inc. is the general distributor for the Contracts.

2. No sales charge is deducted from purchase payments made under the Contracts. A contingent deferred sales charge (CDSC) may be assessed against contract values upon surrender. The time from receipt of each purchase payment to the time of surrender determines the amount of the CDSC. The declining CDSC is in the maximum amount of 7% of a purchase payment, declining to 0% after the 7th year.

3. An annual Contract Maintenance Charge of \$30 is deducted from the contract value, as well as an Administration Charge equal on an annual basis to .05% of the daily net asset value of the Variable Account. The .05% Administration Charge is deducted during both the "pay-in" accumulation phase and the "pay-out" annuity phase. Nationwide relies upon Rule 26a-1 to assess the Contract Maintenance Charge and the Administration Charge. In this regard, Nationwide will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses without profit.

4. Nationwide will assess a mortality and expense risk charge at an annual rate of 1.25% of the value of the Variable Account. Of this amount, .80% represents mortality risks and .45% represents expense risks.

5. The expense risk Nationwide assumes is the guarantee that the annual Contract Maintenance Charge and the Administration Charge will never be increased regardless of actual expense incurred by Nationwide. The mortality risk Nationwide assumes is twofold: (1) The annuity risk of guaranteeing to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (2) the guaranteed minimum death benefit risk it assumes in connection with its promise to return, at a minimum, the contract owner's purchase payments upon death even if the investment experience in the Variable Account has eroded the contractowner's principal investment. The annuity risk is present in the form of annuity purchase rates that are guaranteed at issue for the life of the contract. The mortality is estimated using average mortality rates determined by the 1971 Individual Annuity Table with ages set back one year. There is also the risk that the average life expectancy of the entire population may grow longer.

6. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by Nationwide; conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be a profit to Nationwide. Should the charge result in a profit to Nationwide, it will become part of its General Account surplus.

7. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. This representation is based upon Nationwide's analysis of publicly available information of other insurance

companies of similar size and risk ratings offering similar products. Nationwide will maintain, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey. Nationwide also maintains a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge, given the risks assumed under the Contracts. This memorandum will be made available to the Commission upon request.

8. The application states that the proceeds from the imposition of the CDSC may not be sufficient to cover all explicit sales expenses. Nationwide represents that there is a reasonable likelihood that the Variable Account's proposed distribution financing arrangement will benefit the Variable Account and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be made available to the Commission upon its request.

9. The application states that the investments of the Variable Account will be made in investment companies which, if they should adopt any distribution financing plan under Rule 12b-1 under the 1940 Act, will be made up of a Board of Trustees and Directors, the majority of which will be "disinterested" as defined by the Act. Such Board of Directors or Trustees must formulate and approve any such distribution plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24234 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16596; 812-6940]

Technology Funding Partners IV, an Aggressive Growth Fund, L.P., et al.; Application for Exemption

October 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Technology Funding Partners IV, An Aggressive Growth Fund, L.P. (formerly Technology Funding Partners IV, L.P.) (the "Partnership"), Technology Funding Inc. and Technology Funding Ltd. (the "Managing General Partners").

Relevant 1940 Act Sections:

Exemption requested under section 6(c) of the 1940 Act from certain provisions of sections 2(a)(19) and 2(a)(3) of the 1940 Act.

Summary of Application: Applicants seek an order determining that: (1) Under section 2(a)(19) of the 1940 Act, the Independent General Partners of the Partnership (as hereinafter defined) are not "interested persons" of the Partnership, the other General Partners (as hereinafter defined) or the principal underwriter of the Partnership solely by reason of their status as General Partners of the Partnership and co-partners of the other General Partners; and (2) under section 2(a)(3) of the 1940 Act, no limited partner owning less than 5% of the units of limited partnership interest in the Partnership is an "affiliated person" of the Partnership or any of its partners solely by reason of being a limited partner of the Partnership and a co-partner of the other limited partners and the General Partners.

Filing Date: The application was filed on December 22, 1987, and amended and restated on September 26, 1988, and October 14, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 7, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Partnership and the Managing General Partners, 2000 Alameda de las Pulgas, Suite 250, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton, (202) 272-3024, or Special Counsel H.R. Hallock, Jr., (202) 272-3030, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Partnership is a Delaware limited partnership that has elected status as a business development company pursuant to section 54 of the 1940 Act. It will be governed by an Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments.

2. The Partnership has filed a registration statement under the Securities Act of 1933, as amended, on Form N-2 with respect to a proposed public offering of units of limited partnership interest ("Units"). The maximum proceeds from the offering will be \$40,000,000, which will be invested in 20 to 30 venture capital investments over a period of up to four years.

3. The General Partners of the Partnership initially will consist of three individual general partners (the "Individual General Partners") and the Managing General Partners. Following the commencement of the offering of the Units, the number of Individual General Partners may not be less than three and no more than nine. The initial Individual General Partners will not be "interested persons" of the Partnership within the meaning of that term under section 2(a)(19) of the 1940 Act ("Independent General Partners"), although successor Individual General Partners may be individuals who are affiliated persons of the Managing General Partners. The Managing General Partners are a California corporation (Technology Funding Inc.) and a California limited partnership (Technology Funding Ltd.). The Managing General Partners are in the business of organizing and managing limited partnerships. Both Managing General Partners have registered as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). Technology Funding Securities Corporation ("TFSC"), a registered broker-dealer, will serve as principal underwriter with respect to the sale of Units.

4. The Individual General Partners (initially three in number) and one representative from each Managing General Partner will serve on a management committee ("Committee") of the Partnership. The Committee has complete and exclusive authority to manage and control the Partnership except for those specific activities of the Partnership for which, under the supervision of the Committee, the Managing General Partners will be responsible. Such activities are

summarized below and are specifically set forth in the Partnership Agreement. The Committee will provide overall guidance and supervision with respect to the operations of the Partnership, will perform all duties of a board of directors of a business development company pursuant to the 1940 Act, and will monitor the activities of companies in which the Partnership invests.

5. The Partnership Agreement provides that the general partners are elected at the annual meetings of the limited partners and serve for annual terms. The Committee is empowered from time to time to determine the number of persons to be elected as Individual General Partners. If at any time the number of Independent General Partners is reduced to less than a majority of the general partners, the remaining members of the Committee must, within ninety days, designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to such a majority.

6. The Managing General Partners will be responsible and have authority, subject to the supervision of the Committee, to determine and manage the Partnership's venture capital investments and manage day-to-day Partnership operations. The Independent General Partners will assume the responsibilities and obligations under the 1940 Act required of non-interested directors of a business development company in corporate form. The Managing General Partners undertake that they will not resign or withdraw from the Partnership unless successor Managing General Partners have been appointed and consented to by the limited partners in compliance with the Partnership Agreement.

7. Applicants state that the Independent General Partners will have full-time employment with entities unrelated to the Partnership and will have substantial experience that they will bring to their positions as Independent General Partners. Applicants state that the Independent General Partners are in a position to act capably and independently on behalf of the Partnership and the limited partners. The Partnership Agreement requires the Independent General Partners to act, in their good faith judgment, in the best interest of the Partnership. In addition, the actions of the Independent General Partners will be subject to the fiduciary responsibilities imposed on general partners to limited partners of partnerships by applicable partnership laws.

8. The limited partners, in general, have the right to vote only on certain major Partnership events specifically contemplated by Delaware law (such as dissolution of all or substantially all of the Partnership assets and dissolution of the Partnership) and on certain occasions required by the 1940 Act. The limited partners have no right to participate in the control of the Partnership's business. The rights of limited partners to vote on certain matters are either equivalent to or more limited than those of corporate shareholders. Prior to the issuance of the order for exemption that is the subject of this notice, the Partnership will have obtained an opinion of Delaware counsel that the possession or exercise of the voting rights granted to limited partners will not subject the limited partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act.

9. The Partnership Agreement empowers the general partners to take all actions that may be necessary or appropriate to protect the limited liability of the limited partners. The Partnership does not presently have an insurance policy that would provide coverage to persons who become limited partners, but the general partners expressly represent and undertake that they will take all such actions necessary or appropriate to protect the limited liability of the limited partners. Moreover, the Partnership will consider the possibility of obtaining an errors and omissions insurance policy, and the Individual General Partners will periodically review the appropriateness of obtaining such an insurance policy for the Partnership.

10. The Partnership Agreement provides generally that the net profits of the Partnership will be allocated first to those partners with deficit capital account balances until such deficits have been eliminated, then to the partners as necessary to offset net losses previously allocated to such partners and sales commissions charged to their capital accounts, and then 75% to be limited partners (generally in proportion to the number of units held by each), 5% to the limited partners (to be allocated pursuant to "unit months" as defined in the Partnership Agreement) and 20% to the Managing General Partners.

11. The Partnership Agreement generally provides that the cash and securities available for distribution will be distributed 99% to the limited partners and 1% to the general partners until "conversion", i.e., when the amount previously distributed equals the aggregate capital contributions of all

limited partners, less any excess capital contributions returned to the limited partners. Thereafter, the Partnership will make distributions, subject to the representations and express conditions agreed to below, in proportion to the partners' capital account balances. The Partnership Agreement also provides for a special allocation to the Managing General Partners of Net Loss (as defined in the Partnership Agreement) otherwise allocated to a Limited Partner, that exceeds the positive balance in the capital account of such Limited Partner and a subsequent special allocation of Net Profit (as defined in the Partnership Agreement) in the same amount. In addition, the Partnership Agreement provides that securities distributed in kind to the partners will be treated as if sold at the time of distribution. The various allocation provisions in the Partnership Agreement have not been reviewed or approved by the Commission and the Commission expresses no opinion with regard to whether Section 205 of the Advisers Act permits such allocations.

Applicants' Legal Conclusions

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed "interested persons" of the Partnership. The Independent General Partners also could be construed to be "interested persons" of the Partnership by virtue of being "interested persons" of an investment adviser and principal underwriter to the Partnership given their status as "co-partners," and consequently, "affiliated persons" with the Managing General Partners. The Managing General Partners could be construed to be investment advisers of the Partnership. Furthermore, one Managing General Partner "controls," and the other Managing General Partner is "under common control with" the principal underwriter, which would make the Managing General Partners "affiliated persons" of the principal underwriter, TFSC.

2. Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) to the extent that each Independent General Partner would be deemed to be an "interested person" of the Partnership, the other General Partners, or TFSC, solely because such Independent General Partner is a general partner of the Partnership and a co-partner of the other General Partners. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated

business development company. Section 2(a)(19) excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

3. Each person who becomes a limited partner will be a partner of the Partnership and thus a co-partner thereof with each other limited partner and with each General Partner. Thus, each limited partner will be deemed to be an "affiliated person" of the Partnership as well as of each other limited partner and each General Partner merely by virtue of having purchased a Unit and becoming a limited partner. Section 2(a)(3) of the 1940 Act specifically excludes from the definition of "affiliated persons" shareholders with less than a 5% ownership in a corporation. Applicants state that limited partner investors may be deemed affiliates of the Partnership because section 2(a)(3) of the 1940 Act contains no comparable exclusion for limited partners of partnerships. Applicants therefore seek exemption from the provisions of section 2(a)(3) of the 1940 Act to the extent that limited partners with less than 5% of the Units would be deemed "affiliated persons" of the Partnership, any of the other limited partners and the General Partners of the Partnership. Such relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

4. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act to grant the requested exemption from the provisions of sections 2(a)(19) and 2(a)(3).

Applicants' Conditions

Applicants agree that the following may be made express conditions to the requested order:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an investment company registered under the 1940 Act.

2. The Partnership will not make any in-kind distributions of portfolio securities to its partners until it has obtained either a no-action letter from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (*i.e.*, that unrealized gains or losses attributable to securities distributed in-kind to partners are properly deemed realized upon such

distribution) or, in the alternative, the Partnership has obtained an order of exemption from section 205 of the Advisers Act pursuant to section 206A of the Advisers Act, permitting the Partnership to deem such gains or losses to be realized upon any in-kind distribution.

3. Under the Partnership Agreement, upon the removal of the Managing General Partners, all unrealized gains and losses are deemed realized for purposes of making a final allocation to the Managing General Partners. However, the Partnership agrees not to deem such unrealized gains or losses realized until it has obtained either a "no-action letter" from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (*i.e.*, that such treatment of unrealized gains and losses is appropriate) or, in the alternative, the Partnership has obtained an exemption from section 205 by Commission order issued pursuant to section 206A of the Investment Advisers Act of 1940, permitting the Partnership to deem such gains or losses to be realized upon in-kind distribution.

4. Applicants will obtain an opinion of counsel or other authority satisfactory to the Independent General Partners that payment of the Managing General Partners' fees and allocation of the profits and losses as set forth in the Partnership Agreement is in accordance with section 205 of the Advisers Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24232 Filed 10-19-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 12-D]

Disaster Assistance; Amendment 2; Correction

Delegation of Authority No. 12-D (48FR9981, March 9, 1983) is hereby amended to Correct the Delegated Authority in Paragraph 1.A.4.

Delegation of Authority No. 12-D is amended to read as follows:

- * * * * *
1.
 - A.
 4. To determine eligibility and make size determinations of disaster loan applicants.
- * * * * *

Effective Date: October 20, 1988.

Dated: October 13, 1988.

Bernard Kulik,
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-24212 Filed 10-19-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of Foreign Missions

[Public Notice 1083]

Determination Under the Foreign Missions Act Concerning the Acquisition of Real Estate Properties Suitable to Serve as Office and Residences for the Embassy of the People's Republic of Bulgaria in Washington, DC

AGENCY: Office of Foreign Missions, State.

ACTION: Notice.

SUMMARY:

Authorities

Pursuant to the Foreign Missions Act of 1982, as amended (22 U.S.C. 4301 *et seq.*) ("the Act"), the Secretary of State, or his delegate, is authorized to require a foreign mission: (A) To obtain benefits from or through the Director of the Office of Foreign Missions on such terms and conditions as the Secretary may approve; or (B) to forego the acceptance, use of relation of any benefit or to comply with such terms and conditions as the Secretary may determine as condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention or use of real property, or application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State or municipal governmental authority, or any entity providing public services). 22 U.S.C. 4304(b). Among the terms and conditions that the Secretary may impose are the requirement to pay the Director of the Office of Foreign Missions a surcharge or fee. 22 U.S.C. 4304(C).

Department of State Delegation of Authority No. 147, dated September 13, 1982, delegates to the Under Secretary of State for Management certain authorities under the Act, including authority to make the above-described determinations and designations of benefits.

Delegation of Authority No. 147, by express terms, authorized the successive redelegation of the authorities contained therein to other officers of the Department of State. Redlegation of authority to the Director of the Office of

Foreign Missions was accomplished by Foreign Affairs Manual Circular No. 82-27, dated October 15, 1982, subsequently modified in Volume 1 FAM (Foreign Affairs Manual) 157.1, which specifically provides that the "Director of the Office of Foreign Missions exercises authority for the Under Secretary for Management to perform functions vested in the Secretary of State by * * * the Foreign Missions Act."

The Act makes it unlawful for any person to make available any benefits to a foreign mission contrary to the provisions of the Act. 22 U.S.C. 4311(a). Foreign mission includes the personnel of such mission. 22 U.S.C. 4302(a)(4).

Pursuant to the above authorities, I hereby make the following determination applicable to the Embassy of the People's Republic of Bulgaria in Washington, DC and to the personnel assigned to the Embassy of the People's Republic of Bulgaria in Washington, DC. For purpose of this Determination, personnel assigned to the Embassy of the People's Republic of Bulgaria in Washington, DC, includes members of the Embassy and members of the family forming part of the household of such members.

Determination

I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 4304(b) of the Act to require the Government of the People's Republic of Bulgaria and its official representatives in the United States to acquire all real property intended to serve as office space for the Embassy of the People's Republic of Bulgaria in Washington, DC, or as residential properties for personnel assigned to the Embassy of the People's Republic of Bulgaria in Washington, DC, from or through the Office of Foreign Missions under such terms and conditions as may be established by the Director of the Office of Foreign Missions.

DATE: A determination issued by the Director of the Office of Foreign Missions shall be effective at such time as the Director may prescribe.

FOR FURTHER INFORMATION CONTACT: Persons wishing clarification as to the applicability of this Determination or Information on subsequent Determinations may contact the Office of Foreign Missions, U.S. Department of State, 3005 Massachusetts Avenue, NW., Washington, DC 20008; or by telephone (202) 673-6358.

SUPPLEMENTARY INFORMATION: Is it unlawful for any person subject to the jurisdiction of the United States to provide, or contact to provide, real estate brokerage services to the

aforementioned foreign mission, or any member thereof, other than in accordance with section 4311(a) of the Act, this Determination and any determination issued hereunder.

Harry W. Porter III,

Acting Director, Office of Foreign Mission.

September 29, 1988.

[FR Doc. 88-24303 Filed 10-19-88; 8:45 am]

BILLING CODE 4710-06-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee and Advisory Committee for Trade Policy and Negotiations; Meetings and Determination of Closing of Meetings

The meetings of the Intergovernmental Policy Advisory Committee to be held October 26, 1988 from 9:30 a.m. to 12:00 Noon, in Washington, DC, and the Advisory Committee for Trade Policy and Negotiations to be held October 27, 1988 from 1:30 p.m. to 5:00 p.m., in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

[FR Doc. 88-24265 Filed 10-19-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Indianapolis Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L.

96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On June 24, 1988, the FAA determined that the noise exposure maps submitted by the Indianapolis Airport Authority under Part 150 were in compliance with applicable requirements. On September 14, 1988, the Administrator approved the Indianapolis International Airport noise compatibility program. All of the recommendations of the program were approved except for one measure.

EFFECTIVE DATE: The effective date of the FAA's approval of the Indianapolis International Airport noise compatibility program is September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Indianapolis International Airport, effective September 14, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the

provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The Indianapolis Airport Authority submitted to the FAA on May 22, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1986 through May 1987. The Indianapolis International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 24, 1988. Notice of this determination was published in the *Federal Register* on July 14, 1988.

The Indianapolis International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date

of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 24, 1988 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained thirty one proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 14, 1988.

Outright approval was granted for thirty of the thirty-one specific program measures. Eleven of the thirty-one measures submitted were noise abatement measures. These included retaining select existing noise abatement measures, instituting preferential runway use programs and specific departure procedures, and establishing engine noise suppression policies. The next seventeen of the thirty-one measures submitted were land use measures, of which one was not approved. The rest included planning, zoning and subdivision recommendations/policies, instituting noise impact disclosure (formal and informal) and acquiring land, easements and development rights. The last three measures of the thirty-one submitted, identified as "Other Implementing Measures," included administrative-type measures such as responding to noise complaints and on-going review of the noise program.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 14, 1988.

The record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591
Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018
Federal Aviation Administration, Chicago Airports District Office, 2300

East Devon Avenue, Room 260, Des Plaines, Illinois 60018
Indianapolis Airport Authority,
Indianapolis International Airport,
Indianapolis, Indiana 46251

Questions may be directed to the individual named above under the heading, "FOR FURTHER INFORMATION CONTACT."

Issued in Des Plaines, Illinois, September 23, 1988.

Stanley Rivers,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 88-24262 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps; Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Dayton under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On June 22, 1988 the FAA determined that the noise exposure maps submitted by the city of Dayton under Part 150 were in compliance with applicable requirements. On September 14, 1988, the Administrator approved the Dayton International Airport noise compatibility program. All of the recommendations of the program were approved. The city of Dayton has also requested under FAR Part 150, § 150.35(f), that FAA determine that revised noise exposure maps submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program are in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised noise exposure maps for Dayton International Airport for the years 1987 and 1992 submitted with the noise compatibility program, are in compliance with applicable requirements of FAR Part 150 effective September 14, 1988.

EFFECTIVE DATE: The effective date of the FAA's approval of the Dayton International Airport noise compatibility program is September 14, 1988. The

effective date of the FAA's determination on the revised noise exposure maps is September 23, 1988.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Dayton International Airport, effective September 14, 1988, and that revised noise exposure maps for 1987 and 1992 for this same airport are determined to be in compliance with applicable requirements of FAR Part 150.

A. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant

agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The city of Dayton submitted to the FAA on November, 1985 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1984 through June 1988. The NEM's were subsequently revised in October 1988 and again in June 1988. The Dayton International Airport noise exposure maps were initially determined by FAA to be in compliance with applicable requirements on June 22, 1988. Notice of this determination was published in the **Federal Register** on July 15, 1988.

The Dayton International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 22, 1988 and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program

within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained eighteen proposed measures for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 14, 1988.

Outright approval was granted for all the specific program measures. Seven of the eighteen measures were actions on and off the airport within the airport operator's control. They included on-airport extension of runways 6L, 18 and 24R, and the construction of a noise barrier. Off airport measures included purchase of homes, soundproofing of homes and/or purchases of aviation easements, and establishing a continuing planning effort for noise mitigation. Another four measures were submitted that were actions under local control, three were zoning related while the fourth was related to revising existing building codes. The final seven measures submitted were actions which are under Federal control. They related to flight tracks and runway utilization. These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 14, 1988.

B. The FAA also has completed its review of the revised noise exposure maps and related descriptions submitted by city of Dayton. The specific maps under consideration are the 1987 and the 1992 NEMs found in the 1988 Addendum of the submission. The FAA has determined that these maps for Dayton International Airport are in compliance with applicable requirements. This determination is effective on September 23, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the

provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations: Federal Aviation Administration 800 Independence Avenue, SW., Room 617 Washington, DC 20591

Federal Aviation Administration Great Lakes Region 2300 East Devon Avenue, Room 261 Des Plaines, Illinois 60018

Federal Aviation Administration Detroit Airports District Office East Willow Run Airport 8800 Beck Road Belleville, Michigan 48111 City of Dayton Department of Aviation Terminal Building Dayton International Airport Vandalia, Ohio 45377

Questions may be directed to the individual named above under the heading, for further information contact.

Issued in Des Plaines, Illinois, September 23, 1988,

Stanley Rivers,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 88-24263 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards District Office at Oakland, CA; Relocation

Notice is hereby given that on or about October 11, 1988, the Flight Standards District Office at 9630 Earhart Road, Building L-105, Oakland California 94614 will be relocating to 8517 Earhart Road, Oakland, California 94616. The mailing address remains

unchanged: P.O. Box 2397, Airport Station, Oakland, California 94614. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Hawthorne, CA, on October 5, 1988.

Joe A.P. Alvarez,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 88-24261 Filed 10-19-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 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: 1515-0053.

Form Number: CF 3299.

Type of Review: Extension.

Title: Declaration for Free Entry of Unaccompanied Articles.

Description: This form serves as a declaration for residents, non-residents, and military personnel who are attempting to enter their personal and household goods free of duty. This form is also applicable for tools of trade and professional books.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated number of Respondents: 10,000.

Estimated Burden Hours Per Response/Recordkeeping: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 25,799 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 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 88-24217 Filed 10-19-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 14, 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.

Departmental Offices.

OMB Number: 1505-0107.

Form Number: None.

Type of Review: Extension.

Title: Regulation on Agency Protests.

Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency-level protests.

Respondents: Businesses and other for-profit, non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per

Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 20 hours.

Clearance Officer: Dale A. Morgan,
(202) 343-0263, Departmental Offices,
Room 224, Main Treasury Building,
15th & Pennsylvania Avenue NW.,
Washington, DC 20220.

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. 88-24218 Filed 10-19-88; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular; Public
Debt Series No. 26-88]

Treasury Notes; Series H-1995

October 13, 1988.

The Secretary announced on October 12, 1988, that the interest rate on the notes designated Series H-1995, described in Department Circular—Public Debt Series—No. 26-88 dated October 6, 1988, will be 8% percent. Interest on the notes will be payable at the rate of 8% percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 88-24209 Filed 10-19-88; 8:45 am]
BILLING CODE 4810-40-M

Senior Executive Service; Departmental Performance Review Board

Action: This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 52 FR 37038, October 2, 1987, in accordance with 5 U.S.C. 4314(c)(4).

Scope: This notice applies to all components within the Department of the Treasury.

Purpose: The purpose of the Board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, and certain other positions. The Board makes recommendations to the Secretary or his designee as appointing authority. The Board will perform PRB functions for other top bureau positions if requested. In addition, the Board will review Presidential Rank nominations upon request.

Composition of PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members of the PRB shall consist of career appointees. The names and titles of the PRB members are as follows:

Chairperson, Jill E. Kent, Assistant Secretary of the Treasury (Management)
Jeanne S. Archibald, Deputy General Counsel
Thomas J. Berger, Deputy Assistant Secretary (International Monetary Affairs)
William J. Bremner, Deputy Assistant Secretary (Federal Finance)
O. Donaldson Chapoton, Assistant Secretary (Tax Policy)
Roger M. Cooper, Deputy Assistant Secretary (Information Systems)
William E. Douglas, Commissioner, Financial Management Service
Eugene H. Essner, Deputy Director, U.S. Mint
Wayne E. Grant, Deputy Assistant Secretary (Departmental Finance and Management)
Richard L. Gregg, Commissioner, Bureau of Public Debt
Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms
Michael F. Hill, Associate Director (Policy and Management), U.S. Mint
Michael R. Hill, Inspector General
Susanne H. Howard, Deputy Treasurer of the United States
Michael H. Lane, Deputy Commissioner, U.S. Customs Service
Gerald Murphy, Fiscal Assistant Secretary
Michael J. Murphy, Senior Deputy Commissioner, Internal Revenue Service
Howard W. Nester, Director (Revenue Estimating)
Thomas P. O'Malley, Director, Management Programs Directorate
Katherine D. Ortega, Treasurer of the United States
Marcus W. Page, Deputy Fiscal Assistant Secretary
Charles B. Respass, Director, Facilities Management Division
Charlene J. Robinson, Director, Human Resources Directorate
Kenneth R. Schmalzbach, Assistant General Counsel (Administrative and General Law)
Charles Schotta, Deputy Assistant Secretary (Arabian Peninsula Affairs)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement)
C. Eugene Steuerle, Deputy Assistant Secretary (Tax Analysis)
Edward T. Stevenson, Special Assistant

to the Assistant Secretary (Legislative Affairs)
Edwin A. Verburg, Director, Financial Services Directorate
Gregory P. Wilson, Deputy Assistant Secretary (Financial Institutions Policy)

For Further Information Contact:
Charlene J. Robinson, Director, Human Resources Directorate, Room 7115, ICC Building, 1201 Constitution Avenue NW., Washington, DC 20220, Telephone: (202) 566-5256.

This notice does not meet the Department's criteria for significant regulations.

Dated: October 6, 1988.

Jill E. Kent,

Assistant Secretary of the Treasury (Management).

[FR Doc. 88-24351 Filed 10-19-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 203

Thursday, October 20, 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).

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 53 FR 40165, Thursday, October 13, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., October 14, 1988.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting of June 6, 1988.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Resolution re: Ratification of Financing for Peanut Quality Improvement Research.
4. Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1988, CZ-266, Resolution No. 25, Amendment 5 and Amendment 6.
5. Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1989, CZ-266, Resolution No. 26.

CONTACT PERSON FOR MORE

INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Date: October 17, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88-24372 Filed 10-18-88; 11:55 am]

BILLING CODE 3410-05-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 25, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

- Compliance matters pursuant to 2 U.S.C. 437g.
- Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
- Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 27, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

- Setting of Dates for Future Meetings.
- Corrective and Approval of Minutes.
- Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
- Draft AO 1988-44: Bart E. Ecker on behalf of the Bonner for Congress Committee.
- Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons, Secretary of the Commission.

FR Doc. 88-24365; Filed 10-18-88; 11:24 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 26, 1988.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Rules Implementing the Foreign Shipping Practices Act of 1988—Consideration of Issuance of Proposed Rules.

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary

[FR Doc. 88-24400 Filed 10-18-88; 3:17 pm]

BILLING CODE 6730-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND DATE: 9:30 a.m. Tuesday, October 25, 1988.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items will be open to the public. The last two items will be closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Aircraft Accident Report: AVAair, Inc., Flight 3378, Fairchild Metro III, Cary, North Carolina, February 19, 1988.
2. Pipeline Accident Report: Natural Gas Pipeline Explosion, Sheraton Motor Inn, Winston-Salem, North Carolina, January 18, 1988.
3. Opinion and Order: Administrator v. Walton, Docket SE-7946; disposition of respondent's petition for reconsideration.
4. Opinion and Order: Administrator v. Cronin, Docket SE-7749; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 14, 1988.

[FR Doc. 88-24354 Filed 10-18-88; 8:48 am]

BILLING CODE 7533-01-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 25, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844, North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Changes in the RUIA Regulations.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, James F. Gettings.

(B) Appeal from Referee's Denial of Disability Annuity, Dale L. Hoyle.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board COM No. 312-751-4920, FTS No. 386-4920.

Dated: October 14, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-24414 Filed 10-18-88; 3:18 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register

Vol. 53, No. 203

Thursday, October 20, 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 COMMERCE

International Trade Administration

Lamont-Doherty Geological Observatory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 88-22826 appearing on page 38972 in the issue of Tuesday, October 4, 1988, make the following corrections:

1. On page 38972, in the third column, in the first line, "Material" should read "Materials"; and in the second line, "987" should read "897".

2. On the same page, in the same column, in the fourth complete paragraph, in the 12th line, after the word "is" insert "of".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 10

[Docket No. 80340-8188]

Practice Before the Patent and Trademark Office; Government Employees

Correction

In rule document 88-22766 beginning on page 38948 in the issue of Tuesday, October 4, 1988, make the following corrections:

1. On page 38948, in the third column, under **SUMMARY**, in the second line, "it" should read "its".

2. On page 38949, in the third column, in the second complete paragraph, in the second line, "and" should read "that".

3. On the same page, in the same column, in the fifth complete paragraph, in the third line, "opinion" was misspelled.

§ 10.10 [Corrected]

4. On page 38950, in the second column, in § 10.10(b)(1), in the second line, after the word "patent" insert "application pending in any patent".

5. On the same page, in the same column, in § 10.10(b)(2), in the fourth line, remove the words, "pending in any patent application".

6. On the same page, in the same column, in amendatory instruction 4, in the third line, "paragraph" should read "paragraphs".

§ 10.23 [Corrected]

7. On the same page, in § 10.23(c)(13), in the third column, in the second line, "understanding" should read "undertaking".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 80857-8157]

Continuation of the Precision Measurement Grants Program

Correction

In notice document 88-23156 beginning on page 39495 in the issue of Friday, October 7, 1988, make the following correction:

On page 39495, in the second column, in the **SUMMARY**, beginning in the 12th line, the second sentence should read "Applications are now being accepted for two new NIST Precision Measurement Grants to be awarded beginning October 1, 1989 (fiscal year 1990)."

BILLING CODE 1505-01-D

Test Report Federal Register

Thursday
October 20, 1988

Part II

Department of Health and Human Services

Agency for Toxic Substances and
Disease Registry

Environmental Protection Agency

Hazardous Substances Priority List,
Toxicological Profiles; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-6]

Hazardous Substances Priority List, Toxicological Profiles; Second List

AGENCIES: Department of Health and Human Services (DHHS), Agency for Toxic Substances and Disease Registry (ATSDR); and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), establishes certain requirements for EPA and ATSDR of DHHS with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Section 104(i)(2) (42 U.S.C. 9604(i)(2)) of CERCLA requires that the two agencies prepare a list of at least 100 hazardous substances, in order of priority, which are most commonly found at NPL facilities and which the agencies determine are posing the most significant potential threat to human health. The agencies complied with that requirement with the publication of the priority list of 100 substances (52 FR 12866, April 17, 1987). Section 104(i)(2) of CERCLA also requires the agencies to revise the priority list no later than October 17, 1988. Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. This notice contains the revised priority list containing an additional 100 substances, and provides a brief summary of the procedure used to assemble the list.

ADDRESS: Comments on this notice should bear the docket control number ATSDR-6, and should be submitted to: Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Chamblee 28S, F-38, 1600 Clifton Road, NE., Atlanta, Georgia, 30333.

Comments which contain confidential business information (CBI) should clearly note that they contain CBI and should be sent in triplicate to the address given above. For further information regarding the submission of comments containing CBI, see unit V of this notice. Non-confidential versions of

comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 28S, Room 1103, 4770 Buford Highway, NE., Chamblee, Georgia from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT:

Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, Building 28S, F-38, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: 404-488-4620.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

As added by SARA, section 104(i)(2) of CERCLA requires the preparation of: (1) A list of hazardous substances found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

A priority list of the first 100 substances was published (52 FR 12866, April 17, 1987) (See Appendix), with a short summary of the procedure used by ATSDR and EPA to compile that list. In that notice, the agencies solicited public comment on the approach adopted for evaluating and ranking hazardous substances found at NPL sites, and announced the intention to refine the listing process in response to these comments and ongoing efforts by the agencies to improve the listing process.

The changes in the procedure used to prepare the second priority list are summarized below. The agencies solicit public comment on this approach; such comments should be submitted in accordance with the instructions given in this notice. The agencies will continue to seek improvements in the listing process as future revisions of the list are prepared. All nonconfidential comments will be placed in the public file for this notice. A more detailed description of the revised listing methodology is contained in support documents which have been placed in the public file and are available for public review (see unit V of this notice).

II. Review of Methodology for Selecting Substances on the First Priority List

A. General Approach for the First Priority List

To obtain the first list of 100 hazardous substances, ATSDR and EPA defined a subset of the 717 hazardous substances which formed the CERCLA list (under section 102 of CERCLA). The subset was defined as those chemicals which EPA has identified at National Priority List (NPL) sites. To rank the chemicals within this subset, three criteria were considered: (1) Chemical toxicity, (2) frequency-of-occurrence of subset substances at NPL sites or facilities, and (3) potential for human exposure to the substances. These criteria reflect the requirements of section 104(i)(2) of CERCLA, as well as the general practice of defining human exposure potential of a chemical substance. To develop a detailed ranking system employing these criteria, ATSDR and EPA first reviewed a number of hazard scoring systems for their applicability to the ranking criterion of toxicity. From all the approaches considered, the Reportable Quantity (RQ) scoring scheme was selected for ranking toxicity of the 100 priority substances. The RQ scoring scheme is described in several Federal Register documents (50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987).

The second criterion used by ATSDR and EPA to prepare the first priority list of hazardous substances was the frequency-of-occurrence at NPL sites. Data from the Contract Laboratory Program (CLP) was used for determining frequency-of-occurrence. The CLP is an EPA program which supports that Agency's hazardous waste activities by providing a range of contract chemical analysis services. A statistically-designed survey of a subset of the CLP data (CLP survey) was developed in 1984. The CLP survey represents a random, stratified sample of sites and waste samples from those sites that were analyzed under the CLP from 1980 to 1984. The survey provides data on the percentage of sites at which a substance was detected at least once in any medium (i.e., frequency-of-occurrence) and the average and range of concentrations across media or matrices (e.g., soil, ground water, drums).

The third criterion used to prepare the first priority list of hazardous substances was the potential for human exposure. ATSDR and EPA evaluated various sources of data associated with this criterion, and selected the CLP survey data to derive a rough estimate

of potential for human exposure to hazardous substances at NPL sites. Three types of exposure-related data from the CLP survey were used: the average concentration of the candidate substances detected in ground water and surface water across the 358 NPL sites included in the CLP survey; the frequency of detection of those substances in ground water and surface water across the 358 sites; and whether the substances had been selected for detailed exposure and risk assessment at Superfund Remedial sites.

B. Generation of the First Priority List

Using the ranking factors described above, as well as some minor criteria, ATSDR and EPA developed an algorithm incorporating these criteria to calculate a hazard index value for each candidate substance. This algorithm served as the basis for generating the ranked order of the first 100 priority list substances.

The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites based on the site percent data from the CLP survey. The agencies divided the site percent data value for each substance (representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices. The agencies then calculated an exposure index for each substance by ranking them based on the three exposure-related factors (with each factor receiving equal weight). The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

For purposes of assessing hazardous substances in toxicity profiles, ATSDR and EPA combined some of the candidate substances into groups. If substances are stereoisomers of one another, are readily metabolized to other substances on the list, or generally are characterized as mixtures with respect to toxicity and/or frequency-of-occurrence, they were grouped together and occupy only one position of the priority list. Examples of these types of substances include: heptachlor and heptachlor epoxide; endrin and endrin aldehyde; PCB's.

III. Methodology for Selecting Substances on the Second Priority List

A. Bases for Improvements in Methodology for Selecting Substances

Since publication of the first priority list of hazardous substances, ATSDR and EPA have continued to seek improvements in the listing process to incorporate into future revisions of the list. The agencies have solicited public comment and conducted critical reviews of the above-described prioritizing method in order to identify potential improvements. The resulting suggestions for improving the method center primarily on improving the estimation of the potential for human exposure to substances at NPL sites. The supporting document for the first priority list of 100 substances identified optimal site-specific data for an exposure assessment that include identification of human exposure pathways, characterization of potentially exposed populations, and determination of exposure concentrations and durations. Lacking such data, rough estimates of potential human exposure were made which relied primarily on surface water and ground water concentrations as measures of potential human exposure. Consequently, no consideration was given to exposure by air or soil, which may be more relevant for some substances than exposure by ground water or surface water. Considering this limitation in the exposure estimate, ATSDR and EPA sought to expand the ranking system to include a better estimate of potential for human exposure than was used for the first priority list of 100 substances.

Further suggestions for changes in methodology stem from differences in the type and quality of information available for substances of lower priority. It is noted, for example, that toxicity information on those substances that are more frequently encountered (and therefore, more likely to rank higher on the hazard index than less frequently-encountered substances) tends to be of a higher quality and more readily available. In addition, using the CLP statistical data base alone, the frequency-of-occurrence tends to vary significantly only for the most frequently detected substances, which makes the frequency of occurrence term relatively nonselective for prioritizing the second list of 100 hazardous substances.

Based on the foregoing considerations, ATSDR and EPA have considered suggestions for utilizing alternative methods to estimate (1) the frequency of occurrence of substances and (2) the relative toxicity of substances. The changes adopted are described in the

following description of the procedure used to generate the second priority list of 100 hazardous substances under SARA Section 110.

B. Determination of the Frequency-of-Occurrence Criterion of the Ranking Methodology

In the procedure for selection of the first 100 priority substances, the number of NPL sites at which a substance is known to occur was estimated from the information on the substance drawn from the CLP statistical data base as it existed at the time of development of the first list (e.g., April, 1987). For selection of the second 100 priority substances, an updated CLP statistical data base, containing additional data entered through August 10, 1988, formed one of the bases for selection of frequency-of-occurrence data on candidate chemicals. Two additional estimates of frequency-of-occurrence were employed.

The first source of additional information for frequency-of-occurrence was the Hazard Ranking System (HRS) data base. The HRS was developed to evaluate hazardous waste sites for listing on the NPL, and assigns a score to a site based upon a uniform scheme incorporating information on toxicity, persistence, and quantity at the site. During evaluation through the HRS method, up to 15 chemicals of concern can be listed at each site. The number of times that a given substance was listed as a chemical of concern in a HRS evaluation was used to estimate the frequency-of-occurrence at NPL sites, by dividing the number of times listed as a chemical of concern by the total number of NPL sites in the current data base (1,177).

The second source of additional information used to estimate frequency-of-occurrence was the Special Analytical Service (SAS) data base. This data base contains information on the occurrence of substances which do not appear in the CLP statistical database for methodological reasons. Most of the information in the CLP statistical data base is obtained under the Routine Analytical Services (RAS) program, in which samples submitted for analysis are screened for certain target chemicals; additional substances are then determined by matching their mass spectra to known standards. A request for determination of a substance under SAS may occur when there is reason to believe that a specific hazardous compound is present in a sample at a concentration below the detection limit of the RAS, or when there is reason to believe that a specific hazardous

substance which is not a target substance may be present in a sample.

The SAS data files were examined to identify substances with five or more requests for SAS which are not present in the CLP statistical database. Those substances were then examined further to determine the number of NPL sites at which the substance had actually been detected. This number was then divided by the total number of NPL sites to obtain a site percent frequency.

The overall site percent value used for a particular substance was the higher of the CLP statistical data base site percent (as determined by either RAS or SAS data) and the NPL Technical data base site percent when both were available.

C. Determination of the Exposure Component of the Ranking Methodology

ATSDR and EPA expanded the bases for evaluating the potential for human exposure to the priority substances in two ways: (1) By considering the air and soil as additional routes of potential exposure, and (2) by considering additional databases reflecting the potential for human exposure to the substances.

The potential for exposure to candidate substances through soil was considered by incorporating data on soil concentrations from the CLP statistical data base in the calculation of an exposure index for each substance. To estimate the potential for air exposure, ATSDR and EPA used an indirect method, since no data are readily available on actual air concentrations of the candidate substances at NPL sites. ATSDR and EPA considered the retention time on a gas chromatography column to be a useful indicator of potential for air exposure, since these values can be determined from the SAS and RAS databases, and since these values correlate positively with boiling point, which in turn correlates negatively with volatility. The potential for air exposure was included in the calculation of an overall exposure index.

Exposure potential also was represented in the second 100 ranking procedure through the incorporation of eight separate data sources. The data sources used were:

- CLP statistical data base (CLPs)
- NPL Technical data base (NPLt)
- National Human Adipose Tissue Survey (NHATS)
- Department of Transportation Hazardous Materials Information System (DOT/HMIS)
- Acute Hazardous Events data base (AHE)
- National Response Center data base (NRC)

Removal Tracking system data base (RTS)

NEXIS

Information from these sources was incorporated in one of three ways: (1) As part of the water, soil and air exposure potential rank (CLP soil and water concentration data, and gas chromatography retention time); (2) as an alternate to the exposure potential rank in determining the overall exposure rank (NPL chemical of concern rank); and (3) as a weighting function applied to the overall exposure rank (NHATS, DOT/HMIS, AHE, NRC, NEXIS, RTS).

The CLP Statistical Data Base (CLPs)

The Contract Laboratory Program (CLP) statistical data base contains data on the occurrence and concentration of chemicals found at NPL and other hazardous waste sites. The data base was derived from CLP Routine Analytical Service (RAS) analyses and contains concentrations of specific chemicals found in soil, ground water, and surface water from a subset of the total NPL sites.

NPL Technical Data Base (NPLt)

The Hazard Ranking System (HRS) was developed to evaluate hazardous waste sites for listing on the NPL, and assigns a score to a site. Data from the HRS evaluation are stored in the NPL technical data base (NPLt). The HRS scores chemicals based upon toxicity, persistence, and quantity at the site. During evaluation through the HRS method, up to 15 chemicals of concern may be listed at each site. The number of times that a given substance was listed as a chemical of concern in the NPLt data base was used to estimate the frequency-of-occurrence at all NPL sites and as a correlate of exposure potential.

Special Analytical Services Data Base (SAS)

Under the Routine Analytical Service (RAS) contracts, samples from CERCLA sites are analyzed for a limited set of "target chemicals." When there is reason to believe that a specific hazardous compound is present at concentrations below the detection limits of the RAS, or when the substance is not a target chemical, a request may be processed through the Special Analytical Services (SAS) contract, in which the contractor makes an analytical determination of the presence and concentration of the specified substance. Frequency of detection of a substance at NPL sites through the SAS was determined by direct analysis of SAS data files.

National Human Adipose Tissue Survey (NHATS)

The National Human Adipose Tissue Survey (NHATS) data base contains chemical analysis data of human adipose tissue collected from individuals in hospitals across the United States. Information is available for 372 substances, derived from 800 individual adipose tissue samples that were pooled into 46 composite samples (approximately 17 individual samples per composite). This data base gives some indication of the degree to which the population of the United States has been exposed to the substances detected. The ATSDR and EPA considered occurrence of a substance in human tissue, as reported in the NHATS, to be an indication of potential for significant human exposure, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

Department of Transportation Hazardous Materials Information System (DOT/HMIS)

The Department of Transportation's Hazardous Materials Information System (DOT/HMIS) data base contains information concerning accidental release of hazardous substances during transportation. A written report must be submitted to HMIS within 15 days of the accidental release. The reports contain an identification of the substance released and an accounting of any injuries or fatalities resulting from the release. The ATSDR and EPA considered occurrence of a substance in the HMIS data base to be an indication of potential for significant human exposure, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

Acute Hazardous Events Data Base (AHE)

The Acute Hazardous Events (AHE) data base was developed by the EPA, following the tragic release of a toxic substance in Bhopal, India, to provide information concerning sudden, accidental releases of toxic chemicals in the United States. The main purpose of the data base is to characterize the kinds of events releasing acutely toxic substances, the substances involved, and the causative factors leading to their release. The ATSDR and EPA considered occurrence of a substance in the AHE data base to be an indication of potential for significant human exposure, and therefore ATSDR and EPA assigned greater weight to the

exposure index for such candidate substances.

National Response Center Data Base (NRC)

The National Response Center (NRC) data base contains information concerning hazardous substance releases exceeding the RQ, pipeline failures and certain transportation incidents involving hazardous substances, and certain releases of toxic or flammable gases. ATSDR and EPA considered the occurrence of a candidate substance in this data base for any release that resulted in death, injury, or evacuation, to be an indication of potential for significant human exposure. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the NRC.

Removal Tracking System Data Base (RTS)

The Removal Tracking System (RTS) data base describes activities undertaken to clean up a site under the Superfund removal program. It lists the materials of concern that triggered a removal action and frequently lists other major contaminants being addressed at a site. ATSDR and EPA considered that the occurrence of a candidate substance in this data base indicates potential for significant human exposure. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the RTS.

NEXIS

The NEXIS information system contains full-text articles reporting the release of toxic substances in over 125 newspapers, newsletters, and wire services. ATSDR and EPA considered the reporting in this data base of release of a candidate substance which led to human death, injury, or evacuation, to be a significant indicator of potential for significant human exposure. Consequently, the agencies increased the weight of the exposure index for any such substance.

D. Determination of the Toxicity Component of the Ranking Methodology

ATSDR and EPA decided to continue to use the reportable quantity (RQ) approach as a hazard scoring system, for the same reasons that guided its choice for the first priority list of hazardous substances. This approach provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the agencies, and all other schemes reviewed were more limited in some aspect of toxicity evaluation.

The reportable quantity ranking scheme was developed by EPA to set RQ's for hazardous substances as required by CERCLA. Each RQ category corresponds to a weight, in pounds, for which releases must be reported. Section 103 of CERCLA requires immediate notification from any person in charge of a vessel or an offshore or onshore facility that releases an amount of a hazardous substance equal to or greater than its RQ. RQ's are developed for individual chemicals and waste streams that have already been designated under CERCLA as hazardous substances.

Each CERCLA hazardous substance is assigned to one of five RQ categories based on chronic toxicity, acute toxicity, carcinogenicity, aquatic toxicity, and ignitability and reactivity. RQ's are determined for each criterion separately, and the lowest of these is selected to represent the RQ adopted for the substance. Only values for acute and chronic mammalian toxicity or carcinogenicity were considered for ranking the second 100 hazardous substances.

Some of the candidate hazardous substances have not yet been assigned RQ values. In these cases, the ATSDR and EPA adopted a technique used by EPA's Office of Toxic Substances (OTS) to evaluate the potential health hazards associated with new chemicals submitted to the Premanufacture Notice Program. Generally, there are few experimental data available for these chemicals. In these cases, OTS employs a panel of expert toxicologists to assign a level of concern for the potential for toxicity, based upon the limited available experimental data, and other information, including physical-chemical properties, known toxicities of analogous substances, and known toxicities of possible metabolites of the substance, or of substances analogous to possible metabolites. Based on this expert opinion, a consensus level of concern for potential toxicity was adjusted to a five-point scale to coincide with the five-point RQ scale. This value was then used to represent the RQ value in the ranking algorithm.

As was done for the first priority list of hazardous substances, ATSDR and EPA used secondary criteria to adjust the RQ's (or RQ-equivalents assigned by the panel of experts) where appropriate. One set of secondary criteria includes biodegradation, hydrolysis, and photolysis. The use of these criteria is based on the fact that substances which have a tendency to be transformed to innocuous products pose a less serious health concern than equally toxic substances that have less tendency to

be so transformed. ATSDR and EPA also used other secondary criteria such as bioaccumulation, high reactivity, and hazardous reaction products to determine if an adjustment of RQ values was appropriate for a given substance.

IV. Second Priority List of 100 Hazardous Substances

A. Generation of the Priority List

ATSDR and EPA generated an algorithm to calculate the hazard index value for each candidate substance, for the purpose of placing the substance on the second priority list of hazardous substances. The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites by means of site percent data from the CLP survey, or from the NPL or the SAS data bases, for those substances not in the CLP. The agencies divided the site percent data value for each substance (representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their indices, then calculated an exposure potential index for each substance. This index was based upon water concentration, soil concentration, and gas column retention time of each substance. The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

The algorithm for calculating the hazard index is described in greater detail in the support document for this notice, which is contained in the public file notice.

B. List of Substances

ATSDR and EPA have continued the practice initiated with the first list of prioritized substances, of grouping the substances in the second list of 100 into 4 priority groups of 25 substances each. Within each group, the agencies have listed the substances in order of their Chemical Abstracts Services (CAS) Registry numbers, to reflect the somewhat inexact nature of the ranking algorithm and the uncertainties of the underlying databases.

The following 100 hazardous substances comprise the second set of 100 priority substances that will be the subject of toxicological profiles prepared by ATSDR. This set, and the first set of 100 priority substances

previously published by ATSDR and EPA, constitute the revised list of at least 200 hazardous substances required under SARA, section 110.

CAS No.	Substance name
Priority Group 1	
51752	Mechlorethamine.
77474	Hexachlorocyclopentadiene.
100425	Styrene.
108054	Vinyl acetate.
115297	Endosulfan (alpha, beta, sulfate).
118967	2,4,6-Trinitrotoluene.
120127	Anthracene.
129000	Pyrene.
302012	Hydrazine.
591786	2-Hexanone.
1332214	Asbestos.
1517483	Plutonium.
7439965	Manganese.
7440144	Radium and compounds.
7440291	Thorium and compounds.
7440315	Tin.
7440360	Antimony.
7440393	Barium and compounds.
7440428	Boron and compounds.
7440484	Cobalt and compounds.
7440611	Uranium and compounds.
8001589	Cresosote.
10043922	Radon and compounds.
10061026	trans-1,3-Dichloropropene.
16984488	Fluorides/fluorine/hydrogen fluoride.
Priority Group 2	
None	Chlorodibenzodioxins.
50000	Formaldehyde.
56382	Parathion (DNTP).
67641	Acetone.
75445	Phosgene.
83329	Acenaphthene.
86737	Fluorene.
91576	2-Methylnaphthalene.
96184	1,2,3-Trichloropropane.
100027	4-Nitrophenol.
106478	4-Chloroaniline.
106934	1,2-Dibromoethane.
110758	2-Chloroethyl vinyl ether.
117840	Di-n-octyl phthalate.
132649	Dibenzofuran.
156592	cis-1,2-Dichloroethylene.
191242	Benzo(g,h,i) perylene.
207089	Benzo(k) fluoranthene.
208968	Acenaphthylene.
298044	Disulfoton.
505602	Mustard gas.
1912249	Atrazine.
7440622	Vanadium.
7446095	Sulfur Dioxide.
14797558	Nitrates/nitrites.
Priority Group 3	
None	Polybrominatedbiphenyls.
None	Chlorodibenzofurans.
63252	Sevin (Carbaryl).
68122	Dimethyl formamide (DMF).
72435	Methoxychlor.
74975	Bromochloromethane.
75456	Chlorodifluoromethane.
85687	Butylbenzyl phthalate.
88744	o-Nitroaniline.
88755	2-Nitrophenol.
93721	2,4,5-TP acid (silvex).
93765	2,4,5-T.
94757	2,4-D, salts and esters.
95578	2-Chlorophenol.
95954	2,4,5-Trichlorophenol.
96128	Dibromochloropropane.
100516	Benzyl alcohol.
101144	4,4'-Methylene-bis-(2-chloroaniline).

CAS No.	Substance name
109660	n-Pentane.
110543	Hexane.
121824	RDX (Cyclonite).
540590	1,2-Dichloroethylene.
2385855	Mirex.
7783064	Hydrogen sulfide.
26471625	Toluene diisocyanate.
Priority Group	
67561	Methanol.
76131	1,1,2-Trichloro-1,2,2-trifluoroethane.
80626	Methyl methacrylate.
99092	m-Nitroaniline.
99354	1,3,5-Trinitrobenzene.
101553	1-Bromo-4-phenoxy benzene.
106445	4-Methylphenol.
107211	Ethylene glycol.
108941	Cyclohexanone.
109999	Tetrahydrofuran.
111659	Octane.
111911	bis(2-Chloroethoxy)methane.
121755	Malathion.
140578	Aramite.
142825	Heptane.
479458	Trinitrophenylmethyl nitramine.
608935	Pentachlorobenzene.
1319773	Cresols.
7005723	4-Chlorophenyl phenyl ether.
7439987	Molybdenum.
7440246	Strontium.
7664939	Sulfuric acid.
10028178	Tritium.
10061015	cis-1,3-Dichloropropene.
25154556	Nitrophenol.

V. Administrative Record

ATSDR and EPA are establishing a single administrative record for this notice. ATSDR has established a public version of this record with non-confidential materials pertaining to this notice [ATSDR docket control number -6]. The public file is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 28-South, Room 1103, 4770 Buford Highway NE., Chamblee, Georgia. At this time there are no confidential materials in the record. The record includes support documents for the first and second priority lists. Any non-confidential public comments on the listing methodology or other non-confidential data or studies will be available for public inspection.

For the Agency for Toxic Substances and Disease Registry.

Dated: October 7, 1988.

James O. Mason,
Administrator, Agency for Toxic Substances and Disease Registry.

For the Environmental Protection Agency.

Dated: October 14, 1988.

Lee M. Thomas,
Administrator, Environmental Protection Agency.

APPENDIX—LIST OF FIRST 100 HAZARDOUS SUBSTANCES

CAS No.	Substance name
Priority Group 1	
50-32-8	Benzo(a)pyrene.
53-70-3	Dibenzo(a,h)anthracene.
56-55-3	Benzo(a)anthracene.
57-12-5	Cyanide.
60-57-1, 309-00-2	Dieldrin/aldrin.
67-66-3	Chloroform.
71-43-2	Benzene.
75-01-4	Vinyl chloride.
75-09-2	Methylene chloride.
76-44-8, 1024-57-3	Heptachlor/heptachlor epoxide.
79-01-6	Trichloroethylene.
86-30-6	N-Nitrosodiphenylamine.
106-46-7	1,4-Dichlorobenzene.
117-81-7	Bis(2-ethylhexyl)phthalate.
127-18-4	Tetrachloroethylene.
205-99-2	Benzo(b)fluoranthene.
218-01-9	Chrysene.
1746-01-6	2,3,7,8-Tetrachlorodibenzo-p-dioxin
7439-92-1	Lead.
7440-02-0	Nickel.
7440-38-2	Arsenic.
7440-41-7	Beryllium.
7440-43-9	Cadmium.
7440-47-3	Chromium.
11096-82-5, 11097-69-1, 12672-29-6, 53469-21-9, 11141-16-5, 11104-28-2, 12674-11-2	PCBs-Aroclor 1260, 1254, 1248, 1242, 1232, 1221, 1016.
Priority Group 2	
56-23-5	Carbon tetrachloride.
57-74-9	Chlordane.
62-75-9	N-Nitrosodimethylamine.
72-55-9, 50-29-3, 72-54-8	4,4'-DDE, DDT, DDD.
75-00-3	Chloroethane.
75-27-4	Bromodichloromethane.
75-35-4	1,1-Dichloroethane.
78-59-1	Isophorone.
78-87-5	1,2-Dichloropropane.
79-00-5	1,1,2-Trichloroethane.
79-43-5	1,1,2,2-Tetrachloroethane.
87-86-5	Pentachlorophenol.
91-94-1	3,3'-Dichlorobenzidine.
92-87-5	Benidine.
107-06-2	1,2-Dichloroethane.
108-88-3	Toluene.
108-95-2	Phenol.
111-44-4	Bis(2-chloroethyl) ether.
121-14-2	2,4-Dinitrotoluene.
319-84-6, 58-89-9, 319-85-7, 319-86-8	BHC-alpha, gamma, beta, delta.
542-88-1	Bis(chloromethyl) ether.
621-64-7	N-Nitrosodi-n-propylamine.
7439-97-6	Mercury.
7440-66-6	Zinc.
7782-49-2	Selenium.
Priority Group 3	
71-55-6	1,1,1-Trichloroethane.
74-87-3	Chloromethane.
75-21-8	Oxirane.
75-25-2	Bromoform.

APPENDIX—LIST OF FIRST 100
HAZARDOUS SUBSTANCES—Continued

CAS No.	Substance name
75-34-3	1,1-Dichloroethane.
84-74-2	Di-n-butyl phthalate.
88-06-2	2,4,6-Trichlorophenol.
91-20-3	Naphthalene.
100-41-4	Ethylbenzene.
107-02-8	Acrolein.
107-13-1	Acrylonitrile.
108-90-7	Chlorobenzene.
118-74-1	Hexachlorobenzene.
122-66-7	1,2-Dinitrotoluene.
124-48-1	Chlorodibromomethane.
156-60-5	1,2-Trans-dichloroethene.
193-39-5	Indeno(1,2,3-cd)pyrene.
606-20-2	2,6-Dinitrotoluene.
1330-2-07	Total xylenes.
7621-93-4-72-20-8	Endrin aldehyde/endrin.
7440-22-4	Silver.
7440-50-8	Copper.

APPENDIX—LIST OF FIRST 100
HAZARDOUS SUBSTANCES—Continued

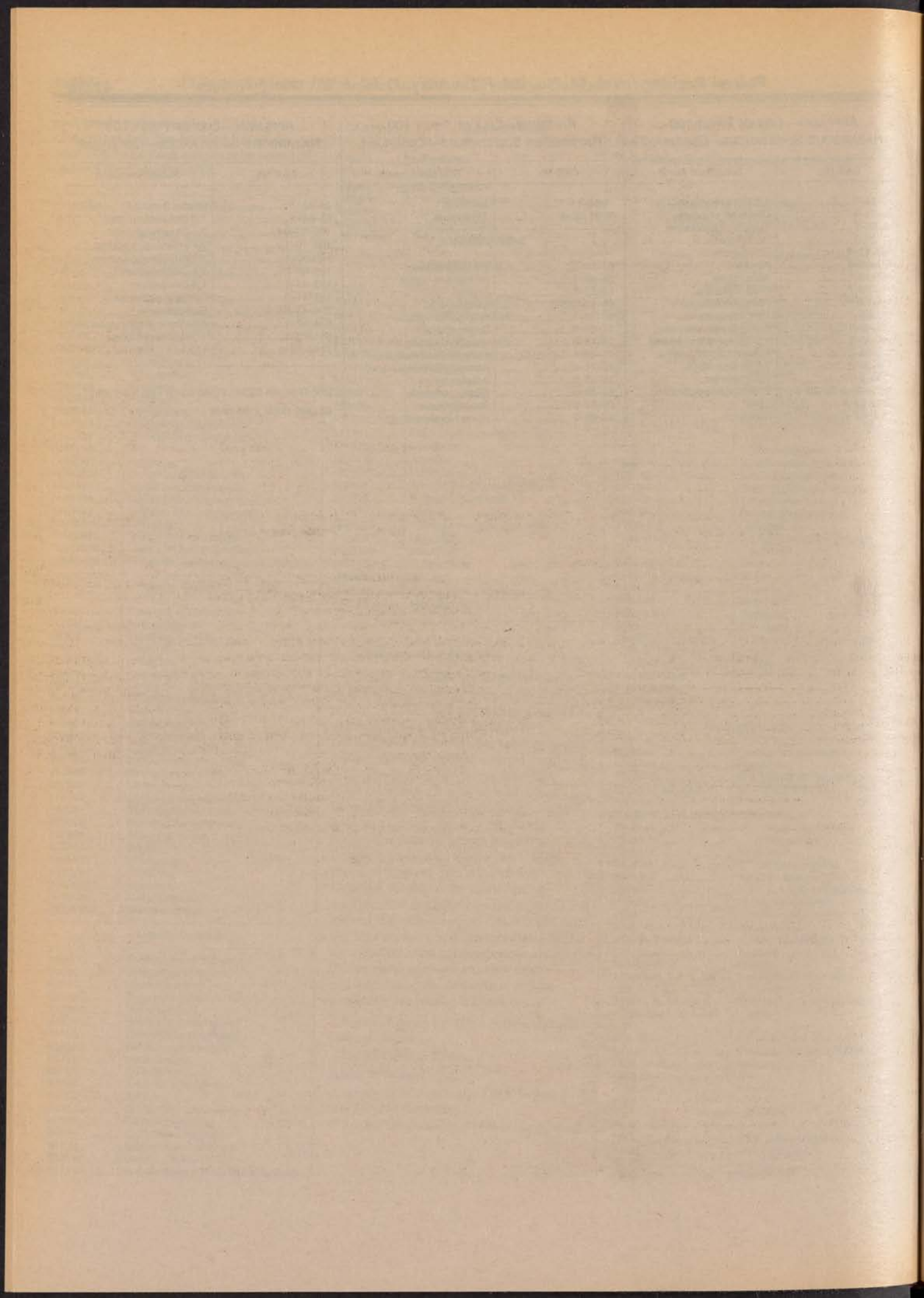
CAS No.	Substance name
7664-41-7	Ammonia.
8001-35-2	Toxaphene.
Priority Group 4	
51-28-5	2,4-Dinitrophenol.
59-50-7	p-Chloro-m-cresol.
62-53-3	Aniline.
65-85-0	Benzoic acid.
67-72-1	1-Hexachloroethane.
74-83-9	Bromoethane.
75-15-0	Carbon disulfide.
75-69-4	Fluorotrichloromethane.
75-71-8	Dichlorodifluoromethane.
78-93-3	2-Butanone.
84-66-2	Diethyl phthalate.
85-01-8	Phenanthrene
87-68-3	Hexachlorobutadiene.

APPENDIX—LIST OF FIRST 100
HAZARDOUS SUBSTANCES—Continued

CAS No.	Substance name
95-48-7	Phenol, 2-methyl.
95-50-1	1,2-Dichlorobenzene.
105-67-9	2,4-Dimethylphenol.
108-10-1	2-Pentanone, 4-Methyl.
120-82-1	1,2,4-Trichlorobenzene.
120-83-2	2,4-Dichlorophenol.
123-91-1	1,4-Dioxane.
131-11-3	Dimethyl phthalate.
206-44-0	Fluoranthene.
534-52-1	4,6-Dinitro-2-methylphenol.
541-73-1	1,3-Dichlorobenzene.
7440-28-0	Thallium.

[FR Doc. 88-24295 Filed 10-17-88; 4:18 pm]

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Federal Register

Thursday
October 20, 1988

Part III

Environmental Protection Agency

40 CFR Part 261

Mining Waste Exclusion; Notice of
Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 3455-1]

Mining Waste Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under Subtitle C of RCRA, pending completion of certain studies by EPA. The Agency interpreted this exclusion (on a temporary basis) to encompass "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76619, November 19, 1980). The purpose of this notice is to further define the scope of the Bevill exclusion with respect to mineral processing wastes.

Today's proposed rulemaking would eliminate from the mining waste exclusion most wastes from the processing of ores and minerals. However, 15 specific high volume processing wastes that the Agency is defining herein as "special wastes," would remain within the Bevill exclusion, and hence, be studied in a Report to Congress and be subject to a subsequent regulatory determination pursuant to section 3001 of RCRA. In addition, today's proposal includes the criteria used by the Agency to identify these "special" processing wastes.

Based upon the criteria articulated below and EPA data on the mineral processing industry, the Agency proposes to retain the following mineral processing wastes within the Bevill exclusion:

1. Slag from primary copper smelting
2. Process wastewater from primary copper smelting/refining
3. Blowdown from acid plants at primary copper smelters
4. Bleed electrolyte from primary copper refining
5. Slag from primary lead smelting
6. Blowdown from acid plants at primary zinc smelters
7. Process wastewater from primary zinc smelting/refining
8. Red and brown muds from bauxite refining
9. Phosphogypsum from phosphoric acid production
10. Slag from elemental phosphorous production

11. Iron blast furnace slag
12. Air pollution control dust/sludge from iron blast furnaces
13. Waste acids from titanium dioxide production
14. Air pollution control dust from lime kilns
15. Slag from roasting/leaching of chromite ore

If this proposal is promulgated, all other mineral processing wastes will be permanently removed from the Bevill exclusion. In other words, this reinterpretation and the subsequent Report to Congress and regulatory determination represent the final stages of EPA's response to the provisions of RCRA section 8002(p); there will be no further studies or regulatory determinations related to ore and mineral processing wastes as a group. Operators of facilities that generate non-excluded wastes will have to determine whether their processing wastes exhibit one or more of the hazardous characteristics and, if the wastes exhibit such characteristics, will have to comply with the technical and administrative requirements of Subtitle C of RCRA. These requirements shall become effective, at the latest, six months after promulgation of the final rule in those states that do not have authorization to administer an EPA-approved hazardous waste program, and somewhat later in authorized states.

In response to a Court-ordered deadline, EPA intends to finalize this proposed rule by February 15, 1989. The Agency therefore solicits public comment on its choice of wastes to be retained within the Bevill exclusion, and in particular seeks information, including chemical characterization or other relevant hazard data, regarding any other mineral processing wastes that may meet the criteria for "special wastes" described in the preamble to today's proposed rule.

DATES: EPA will accept public comments on this proposal until November 21, 1988. The Agency will hold a public hearing on November 17, 1988 from 10 a.m. to noon; see the section title "Public Participation" for details.

ADDRESS: Comments should be sent to the RCRA/CERCLA Docket Clerk, Docket No. F-88-MWEP-FFFFF, Office of Solid Waste (WH-565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9327. Additional information pertinent to this proposal can be found in the docket supporting the recent relisting of six smelter wastes as hazardous wastes (No. F-88-SWRF-FFFFF). The public docket is available

in the Sub-basement at the above address for viewing from 9:00 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public hearing is at the U.S. Environmental Protection Agency, Conference Room 13, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000 or Dan Derkies, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-3608.

SUPPLEMENTARY INFORMATION:

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 - A. Criteria for Identifying Wastes from Ore and Mineral Processing
 - B. Criteria for Identifying "High Volume" Wastes from Ore and Mineral Processing
 - C. Criteria for Identifying "Low Hazard" Wastes from Ore and Mineral Processing
 - D. Proposed Bevill-Excluded Processing Wastes
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I. Court Decision on the Applicability of the Mining Waste Exclusion to Processing Wastes

A. History of the Mining Waste Exclusion

In section 8002(f) of the Resource Conservation and Recovery Act (RCRA), enacted on October 21, 1976, Congress instructed the Administrator of EPA to conduct, in consultation with the Secretary of the Interior, "a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources."

On December 18, 1978 (43 FR 58946), EPA proposed regulations for hazardous waste management under Subtitle C of RCRA. These proposed regulations, among other things, had fewer requirements for a universe of so-called "special wastes" that were generated in large volumes, were thought to pose less of a hazard than other hazardous wastes, and were not thought to be amenable to the control techniques proposed for hazardous waste

treatment, storage, and disposal facilities. EPA identified waste materials from the "extraction, beneficiation, and processing of ores and minerals" as one group of such "special wastes" under the proposed regulations.

On May 19, 1980, when it promulgated the final hazardous waste management regulations, EPA did not include a "special waste" category, stating that such a distinction was unnecessary because: (1) The EP toxicity and corrosivity characteristics of hazardous wastes had been narrowed, thus excluding most "special wastes" from regulatory control, and (2) the Agency intended to promulgate tailored standards for land disposal that could incorporate site- and waste-specific factors, as needed, in future regulations.

On October 21, 1980, Congress enacted Pub. L. 96-482, which included various amendments to RCRA. Section 8002 was amended to include subsection (p), which required the Administrator to study the adverse effects on human health and the environment, if any, of waste from the disposal and utilization of "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore," and submit a Report to Congress on its findings by October 21, 1983. (emphasis added). Section 7 of these amendments (the "Bevill Amendment") amended section 3001 of RCRA to exclude these wastes from regulation under Subtitle C of RCRA, pending completion of the studies called for in sections 8002 (f) and (p).

On November 19, 1980, EPA published an interim final amendment to its hazardous waste regulations to reflect this mining waste exclusion. The regulatory language incorporating the exclusion is identical to the statutory language (except the phrase "including coal" was added). In the preamble to the amended regulation, however, EPA tentatively interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals" (45 FR 76618). The Agency also indicated that this provisional interpretation of the exclusion was temporary and was to be reconsidered following receipt of public comment.

On September 28, 1984, Concerned Citizens of Adamstown, Carroll Manor Civic Association, and the Environmental Defense Fund sued EPA for failure to complete the mining waste studies and Report to Congress required by RCRA sections 8002 (f) and (p). *Concerned Citizens of Adamstown v. EPA*, No. 84-3041, (D.C.C., August 21, 1985). EPA explained to the court that it

planned to propose to "reinterpret" the scope of the mining waste exclusion so that it encompassed fewer wastes. Therefore, EPA suggested two schedules to the court: One for completing the section 8002 mining waste studies and submitting the Report to Congress, and one for proposing and taking final action on the reinterpretation. On August 21, 1985, the District Court ordered EPA to meet these two schedules. *Id.*¹

Under the court order, EPA proposed to narrow the scope of the mining waste exclusion. See 50 FR 40292 (October 2, 1985). In preparing the proposed mining waste exclusion reinterpretation, EPA adopted the "high volume, low hazard" "special waste" concept from EPA's 1978 proposed hazardous waste regulations (43 FR 58946).

In response to the proposal, many commenters "nominated" wastes that they believed fit the "special waste" (i.e., high volume low hazard) criteria, and therefore should remain excluded from Subtitle C regulation as "processing wastes." Because EPA had not explicitly defined the terms "high volume" or "low hazard" in the proposal, the Agency was unable to determine the status of these additional wastes. When EPA tried to infer definitions for these terms based upon the four wastes listed in the proposal as meeting the "special waste" criteria, it became clear that several significant issues had not been resolved (see 51 FR 36233). Because the proposed mining waste reinterpretation did not define the criteria by which wastes were excluded nor did it discuss any of the associated issues, the public could not discern whether a given waste might qualify for continued exclusion as a "high volume, low hazard" waste, or comment on the validity of those criteria.

The public's comments and the Agency's own analyses convinced it that the proposed reinterpretation could not be finalized because it did not set out "practically applicable" criteria for distinguishing "processing" (i.e., high volume, low hazard ore and mineral processing residuals) from non-processing (i.e., non-excluded) wastes. Moreover, the Agency was unsure whether such criteria could be developed, given the complexity of these

issues. Therefore, faced with the court-ordered deadline in *Adamstown*, the Agency withdrew the proposal on October 9, 1986 (51 FR 36233). As a consequence, the interpretation of the mining waste exclusion established in the November 19, 1980, rulemaking notice remained in effect.

B. Court Decision on the Mining Waste Exclusion

The Agency's decision to withdraw its proposed reinterpretation of the mining waste exclusion was subsequently challenged in court (*Environmental Defense Fund v. EPA*, 825 F.2d 1316, DC Cir., 1988 (*EDF v. EPA*)). In these cases, the petitioners contended, and the Court of Appeals agreed, that EPA's withdrawal of its proposed reinterpretation of the Bevill Amendment was arbitrary and capricious because it reaffirmed an "impermissibly overbroad interpretation" of the Bevill Amendment. *EDF v. EPA*, 852 F.2d at 1326.

In reaching this decision, the Court found that the words "waste from * * * processing of ores and minerals" do not convey a self-evident, accepted meaning. *Id.* at 1327. Therefore, the Court reviewed the structure and the legislative history of the Bevill Amendment to ascertain the intent of Congress. The Court found that "[t]he structure of the Bevill Amendment suggests that the term 'solid waste from the * * * processing of ores and minerals' should be interpreted in a manner consistent with the concept of large volume wastes." *Id.* The Court also decided that "[t]he legislative history of the Bevill Amendment establishes that the key to understanding Congress' intent is the concept of 'special waste' articulated in the regulations proposed by EPA on December 18, 1978 following the enactment of RCRA." *Id.* See 43 FR 58911 (1978) and 50 FR 40293 (1985).

In explaining this decision, the Court cited statements made by Members of Congress during the legislative consideration of the exclusion and the description of the provision in the Conference Report accompanying the legislation. Based on these indications of congressional intent, the Court concluded that

it is clear that Congress did not intend the mining waste exclusion to encompass all wastes from primary smelting and refining. On the contrary, Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" criteria, that is, "high volume, low hazard" wastes. 852 F.2d at 1328-29.

¹ EPA submitted its Report to Congress on wastes from the extraction and beneficiation of ores and minerals on December 31, 1985. On July 3, 1986, EPA issued a regulatory determination that it would not regulate these wastes under Subtitle C of RCRA. 51 FR 24496. The U.S. Court of Appeals has upheld this decision. *Environmental Defense Fund v. EPA*, 852 F.2d 1309 (DC Cir., 1988). EPA is currently in the process of developing regulations under Subtitle D that will address the management of extraction and beneficiation wastes.

Thus, when the Agency withdrew its October 2, 1985, proposed reinterpretation of the mining waste exclusion, which was based on implicit "special waste" criteria, EPA by default reverted to its November 19, 1980, interpretation of the exclusion, which did not distinguish between high volume, low hazard processing wastes and other processing wastes. As a consequence, the number of temporarily excluded processing wastes remained very large. The Court ruled that this result was inconsistent with congressional intent. Therefore, the Court ordered EPA to propose, by October 15, 1988, a specific list of mineral processing wastes that meet the criteria of high volume and low hazard, and thus remain temporarily excluded from Subtitle C regulation. 852 F.2d at 1331. Today's proposal has been developed pursuant to the Court's mandate.

In addition to requiring that EPA use a high volume, low hazard paradigm in defining the scope of the term "solid wastes from the * * * processing of ores or minerals," the Court also mandated the relisting (as hazardous wastes) of six individual metallic ore processing waste streams that the Agency had proposed on October 2, 1985. The Court concluded that, regardless of how EPA might subsequently define the high volume and low hazard parameters of the mining waste exclusion, these six wastes would clearly fall outside of the exclusion "[s]ince EPA found that those six smelter wastes are low volume and high hazard wastes * * *." 852 F.2d at 1330. EPA, in a separate rulemaking, has taken action to comply with the Court's directive with regard to listing these six wastes. See 53 FR 35412. These newly relisted wastes are presented in Table 1, below.

TABLE 1.—LISTED HAZARDOUS WASTES GENERATED IN MINERAL PROCESSING OPERATIONS²

RCRA waste No.	Description
KO64.....	Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production.
KO65.....	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.
KO66.....	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.
KO88.....	Spent potliners from primary aluminum reduction.
KO90.....	Emission control dust or sludge from ferrochromium/silicon production.

TABLE 1.—LISTED HAZARDOUS WASTES GENERATED IN MINERAL PROCESSING OPERATIONS²—Continued

RCRA waste No.	Description
KO91.....	Emission control dust or sludge from ferrochromium production.

² Several of these newly relisted wastes appear to be similar to wastes that are being proposed for retention within the Bevill exclusion in today's proposal, particularly KO64 and KO66. It is important to understand, however, that these hazardous materials are waste management residuals, rather than raw mineral processing waste streams. The waste streams proposed for temporary exclusion (blowdown from acid plants at primary copper smelters, blowdown from acid plants at primary zinc smelters, and wastewater from primary zinc smelting) differ significantly in volume and in chemical composition from these listed hazardous wastes.

In order to comply with the Court's other directives in this case, EPA will publish a final rule based upon today's proposal in the *Federal Register* by February 15, 1989, and will submit the required Report to Congress by July 31, 1989. 852 F.2d at 1331. This report will address the following eight study factors pertaining to ore and mineral processing wastes that are listed at section 8002(p) of RCRA:

1. The source and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proved;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

Moreover, in keeping with statutory requirements (RCRA sections 3001(b)(3)(A)(ii) and 3001(b)(3)(C)), EPA will, six months after submission of the Report to Congress, issue a regulatory determination for each studied waste stating either that the waste is to be regulated under Subtitle C of RCRA or that such regulation is unwarranted.

II. Processing Wastes Remaining Within the Bevill Exclusion

To complete its response to the directives of the U.S. Court of Appeals for the DC Circuit in *EDF v. EPA*, EPA is today proposing a list of specific solid wastes from ore and mineral processing that will remain within the Bevill exclusion as special wastes.

In 1986, when EPA withdrew the 1985 proposal to eliminate from the mining waste exclusion many solid wastes from processing ores and minerals, the Agency did so in part because it had not proposed "practically-applicable criteria for distinguishing processing from non-processing wastes" (see 51 FR 36235). Today's proposal, in addition to proposing specific solid wastes from ore and mineral processing that remain within the Bevill exclusion, presents the criteria used by the Agency to identify these as "Bevill excluded" processing wastes.

The Agency examined three types of criteria in selecting the specific wastes to be retained within the Bevill exclusion: (1) Criteria for identifying wastes from ore and mineral processing; (2) criteria for identifying "high volume" wastes from ore and mineral processing; and (3) criteria for identifying "low hazard" wastes from ore and mineral processing. In practice, as discussed below, only the first two criteria were applied to mineral industry operations to produce a tentative list of the wastes that will remain within the exclusion; others may be added pending receipt and evaluation of additional information.

A. Criteria for Identifying Wastes From Ore and Mineral Processing

To determine the proper scope of operations that generate ore and mineral processing wastes, the Agency consulted various sources (e.g., mining dictionaries, various U.S. Bureau of Mines publications, mining handbooks), and was unable to find any standard, accepted definitions, or "plain meanings" for the term "processing." Since EPA concluded that there is no plain meaning of the Bevill Amendment term "solid waste from the * * * processing of ores and minerals",³ the Agency turned to the legislative history and the record of administrative decisions made by EPA in response to exclusion requests from various mineral industry facilities to determine the scope of ore and mineral processing operations (see the docket).

Based on a review of the information available in these sources, the Agency has interpreted the term "solid waste from the * * * processing of ores and minerals" as referring to solid wastes, including pollution control residuals, that are *uniquely* associated with

³ The Court of Appeals agreed that "the words 'waste from * * * processing of ores and minerals' do not convey a self-evident, accepted meaning." 852 F.2d at 1327.

mineral industry operations⁴ and that possess the following attributes:

(1) Follow beneficiation of an ore or mineral (if applicable);

(2) Serve to remove the desired product from an ore or mineral, or beneficiated ore or mineral;

(3) Use feedstock that is comprised of less than 50 percent scrap materials (i.e., at least 50 percent of the feedstock is an ore or mineral, or beneficiated ore or mineral);

(4) Produce either a final mineral product or an intermediate to the final mineral product; and

(5) Do not include operations that combine the product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying); fabrication (any sort of shaping that does not cause a change in chemical composition), except for casting or metal anodes and cathodes;⁵ or other manufacturing activities.

EPA has chosen this definition of processing because it provides maximal flexibility in evaluating candidate waste streams, while at the same time eliminating prospective study of types of wastes that were clearly not envisioned by the Congress as being "special wastes."

Beneficiation operations, which often precede ore or mineral processing operations, include primarily, but not exclusively, physical operations (e.g., crushing, grinding, sorting, sizing, washing, flotation) that concentrate the valuable constituents from an ore or mineral in preparation for further refinement (e.g., smelting)⁶, and so differ from processing operations. The solid wastes generated by these beneficiation operations are normally crushed or pulverized rock, or other earthen materials such as clays or sands.

The Agency considered several alternative definitions of ore and mineral processing that would result in

a narrower interpretation of the term. For example, ore and mineral processing could be considered to end when metal is poured or the identity of the mineral is destroyed. Under such a construction, smelting would be considered a processing operation while refining would not. The Agency has not adopted this approach to defining processing because while such a definition is relatively easy to understand for metallic ores, in practice, it may be difficult to apply in many situations, such as in examining operations that use certain non-metallic ore and mineral feedstocks.

Alternatively, processing could be considered to refer only to operations that generate waste earthen materials, e.g., rock, sand, or clay. Under this definition, processing and beneficiation would be nearly synonymous terms, and no wastes from smelting and/or refining operations would be temporarily excluded from RCRA Subtitle C regulation. EPA chose not to employ this approach to defining the scope of ore and mineral processing operations because it would remove all smelter slags from the excluded waste category. The Agency believes that Congress, in adopting the Bevill Amendment, intended to include at least certain smelting slags within the excluded waste category, since many smelting slags tend to be generated in high volumes.⁷

Solid wastes that satisfy the above criteria, and therefore are excluded from Subtitle C regulation if they also satisfy the proposed "high volume" criteria described below, retain their temporary exclusion when treated prior to disposal if they continue to satisfy the criteria. Likewise, the residuals arising from treatment may also retain excluded status, but only as long as they continue to meet these criteria. For example, low volume sludges produced from treating temporarily excluded high volume aqueous wastes are not excluded from Subtitle C regulation by the Bevill Amendment.

EPA does not consider mixtures of excluded and other, non-excluded hazardous wastes to be excluded by the Bevill Amendment from regulation under Subtitle C of RCRA. If, for example, a listed hazardous waste is combined with an excluded solid waste from ore and mineral processing, the resulting mixture is a hazardous waste

subject to the requirements of Subtitle C, unless and until the Agency "delists" it.⁸ Similarly, if a "characteristic" hazardous waste is mixed with an excluded solid waste, the mixture is subject to the requirements of Subtitle C if it exhibits a hazardous characteristic (i.e., EP-toxicity, corrosivity, ignitability, or reactivity) (40 CFR 261.3(b)(3)).

B. Criteria for Identifying "High Volume" Wastes From Ore and Mineral Processing

In *EDF v. EPA*, the Court states that:

Congress intended the term "processing" in the Bevill Amendment to include only those wastes from processing ores or minerals that meet the "special waste" criteria, that is, "high volume, low hazard" wastes. 852 F.2d at 1331-32 (emphasis added).

Given this directive, the requirements of the Bevill Amendment, and the legislative and regulatory history of the "special waste" issue, it is clear that EPA must unambiguously define criteria by which to distinguish "high volume" processing wastes. Accordingly, today's proposal describes the criteria that the Agency used to distinguish between high and low volume processing wastes, and provides a list of the wastes that, to the best of the Agency's current knowledge, meet the "high volume" criteria. In this way, EPA hopes to not only communicate to industry and the public which wastes it considers to be temporarily exempt from Subtitle C regulation, but also to allow members of the mineral processing industry to evaluate whether or not they may generate additional solid wastes that should be studied under RCRA section 8002(p) prior to a determination as to their regulatory status. Clearly, the application of the "high volume" criteria to specific wastes will depend not only on the specific elements of the criteria themselves but on the definition of "mineral processing" presented above.

Due to the extremely diverse nature of domestic mineral processing operations and their associated wastes, EPA has experienced considerable difficulty in the past in defining criteria that addressed all of the wastes envisioned by the Congress and by the Agency's original concept of "special wastes," while not concurrently including wastes that are not truly high volume and/or low hazard. When the Agency withdrew its proposed reinterpretation in 1986, it

⁴ As EPA has previously explained, the mining and mineral processing waste exclusion does not apply to solid wastes such as "spent solvents, pesticide wastes, and discarded commercial chemical products that are not uniquely associated with . . . mining and allied processing operations." 45 FR 76619 (1980).

⁵ In certain metallic ore processing operations, intermediate metal products must be poured, or cast, prior to further processing or shipping; the casting operation is both integral and necessary to the metal refining process, and generally precedes other processing (i.e., concentrating) operations.

⁶ U.S. EPA. 1985. *Report to Congress on Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale*. Office of Solid Waste and Emergency Response, EPA/530-SW-033. Thrush, P.W. 1988. *A Dictionary of Mining, Minerals, and Related Terms*. Washington, DC U.S. Bureau of Mines, U.S. Dept. of the Interior.

⁷ See, e.g., 126 Cong. Rec. 3364 (1980) (remarks of Rep. Williams) (referring to the need to study copper smelting slags prior to regulation); S. Rep. No. 284, 98th Cong., 1st Sess. 28 (1983) (defining the scope of the 1980 amendment to include smelting slag).

⁸ Unless the hazardous waste is listed only because it exhibits a hazardous characteristic; in that instance, the waste is not considered hazardous when and if it no longer exhibits any of the four characteristics of hazardous waste (40 CFR 261.3(a)(2)(iii)).

noted several issues that needed to be addressed in the development of a "high volume" criterion (51 FR 36233). These and other attendant issues are discussed below along with the "high volume" criteria that EPA has adopted for use in this rulemaking.

Because "high volume" has been so difficult to define, EPA developed an explicit analytical framework to evaluate candidate high volume wastes. In so doing, the Agency had to resolve a number of methodological issues. The following discussion of the high volume criteria addresses the following four primary methodological issues in sequence: (1) The appropriate degree of aggregation of waste streams, (2) the basis for quantitative analysis (plant-specific vs. industry-wide), (3) the units of measure, and (4) the types of other wastes to be used as the basis for comparison.

1. Degree of Aggregation of Waste Streams

EPA has evaluated three options for establishing the degree of aggregation to be used in analyzing the volumes of waste generated:

- (1) Consider each waste stream individually;
- (2) Aggregate waste streams within facility, i.e., conduct the analysis on a facility-wide basis; or
- (3) Combine specific waste streams across mineral commodity sectors, according to similarities in feedstocks, production processes, physical/chemical characteristics, management practices, or other characteristics.

EPA has adopted the first option, deciding to evaluate waste streams individually, rather than in aggregate. For example, waste furnace brick from copper smelting/refining has been evaluated separately from other copper processing wastes such as slag and air pollution control dusts. Given the current level of available information, the Agency believes that this is the most clear and feasible approach.

Aggregating all wastes within a facility for purposes of analysis would ignore the obvious and significant differences in volume and potential hazard that exist between the diverse groups of waste streams produced at mineral processing facilities. Moreover, the discussion of "high volume" or "special" wastes in the RCRA statute, amendments, and in particular the legislative history tends to identify specific waste streams rather than generic or aggregated wastes generated by facilities or industries. In addition, where practical, EPA listings of hazardous wastes under Subtitle C tend to identify specific waste streams

generated at particular types of facilities.

On the other hand, inter-industry similarities in production processes, waste characteristics, and waste management practices suggest that certain waste types might reasonably be combined across mineral commodity sectors (e.g., non-ferrous slags from copper, lead, and zinc smelting). Statutory directive and Congressional intent are not available for guidance in evaluating the appropriateness of this approach, though in its 1985 proposed reinterpretation of the Bevill exclusion, EPA explicitly placed "primary metal smelting slags" inside the narrowed Bevill boundaries (i.e., as a *group* rather than individually) (50 FR 40292). Although the Agency believes that combining wastes for purposes of analysis may in some cases be appropriate, it has not been able to develop a simple and non-arbitrary system for implementing this approach. Therefore, EPA has not combined waste streams to determine which should continue to receive the temporary Bevill exclusion.

2. Basis for Quantitative Analysis

In deciding upon the proper focal point for conducting its quantitative analysis to support a definition of "high volume" processing wastes, EPA considered three basic options:

- (1) Develop and analyze a plant-specific measure of waste generation;
- (2) Examine waste stream generation on an industry-wide basis; and
- (3) Develop and utilize a combination of the first two alternatives.

EPA has chosen option 3, and has evaluated waste streams using both industry-wide and plant-specific perspectives. In making this decision, the Agency put primary emphasis on developing criteria that were unambiguous, could be easily interpreted by industry and the public, and yielded results that were consistent with previously published discussions concerning which mineral processing wastes are high volume and which are not. See e.g., 43 FR 58946, 50 FR 40292.

The high-volume concept, as originally proposed by EPA in 1978, reflected the Agency's concern that certain wastes that were generated in very large quantities could not feasibly be managed in accordance with all of the technical standards of RCRA Subtitle C, especially because many of these wastes are managed on-site. When Congress incorporated the high-volume concept into the RCRA statute with the adoption of the Bevill Amendment, it echoed these concerns. See, e.g., 126 Cong. Rec. 3364 (1980) (remarks of Rep.

Williams). In particular, Congress directed EPA to study, under section 8002(p) of RCRA, these high volume wastes in depth in order to determine whether Subtitle C regulation would be appropriate.

In the 1985 proposed Bevill reinterpretation, the Agency relied primarily on total annual industry waste generation data to determine which waste streams would remain within the temporary exclusion. Use of this measure alone, however, fails to capture certain ore and mineral processing wastes that are not generated widely but are generated in large volumes at each plant. The operators of facilities that produce these wastes may face the same problems with respect to developing and implementing feasible waste management methods as operators in other industry sectors that generate (in aggregate) many millions of tons of waste annually. EPA believes that these facility operators should not be penalized solely because there are fewer plants in their particular ore and mineral processing industry sector than in others that may also generate one or more high volume wastes.

Therefore, EPA believes that it is appropriate to include a measure of typical waste generation at an individual plant (e.g., the mean or median level of waste generated per facility), in evaluating whether a particular waste stream is "high volume."

3. Units of Measure

An important issue related to the previous two involves the units of measure that are applied to mineral processing wastes and that serve as the basis of evaluation and comparison with other "high volume" wastes. Here EPA considered two basic approaches, one of which gives rise to several different potential options:

- (1) Use total (absolute) quantity of waste generated annually (metric tons); and

- (2) Develop and utilize ratios of *relative* waste volume generated to one or more measures of material handled, such as the ratio of waste quantity to the quantity of ore/mineral feedstock, or the ratio of waste quantity to the quantity of final product. One or some combination of these ratios could be used to compare each mineral processing waste with the others and with wastes generated in other industries.

EPA has chosen option 1, which is the simplest, and allows direct comparison with other waste streams, industry sectors, etc., and also facilitates subsequent examination of the technical

feasibility of Subtitle C regulation (e.g., waste volume compared to available disposal capacity). In addition, this simple measure of waste quantity is easy to calculate and existing data allow it to be computed for potential "high volume" processing wastes.

Production levels, and hence, waste generation volumes, in the mineral processing industry, however, fluctuate considerably over time, due primarily to market conditions. Relying upon data from a single year or even several years in succession may therefore present an inaccurate view of likely waste generation rates in the future.

The second alternative, expressing waste generation as a ratio, provides a measure of the degree of concentration that occurs in the process that generates each waste, potentially providing EPA with an additional variable by which to compare and contrast candidate "high volume" processing wastes with the extraction and beneficiation wastes that are clearly within the Bevill exclusion, as well as other "special wastes." Existing data, however, are not adequate to compile candidate ratios for certain prominent large volume mineral processing waste streams.

Nonetheless, the Agency believes that the ratio concept has merit and would consider incorporating some form of ratio into the final rule. For example, EPA has examined several ratios, and has found that a ratio of waste to product of greater than 0.5 effectively distinguishes high volume from low volume processing wastes, based upon the limited data that are available, i.e., the same list of excluded processing wastes is obtained using this criterion as is obtained using the total volume and average volume criteria described below. Although EPA did not utilize this ratio in selecting wastes to be retained within the exclusion for today's proposal, the Agency seeks public comment on this approach and on an appropriate ratio.

4. Wastes To Be Utilized as the Basis for Comparison

EPA also considered several bases of comparison with which to evaluate potential high volume wastes. This issue is important because "high volume" is a relative term, having essentially no meaning when applied to anything in isolation. Again, several options are available for comparing different types of high volume and/or hazardous wastes with mineral processing wastes:

- (1) Extraction and beneficiation wastes;
- (2) Other special study wastes, e.g., oil and gas wastes;
- (3) RCRA Subtitle C wastes; and

(4) Some combination of the previous three.

EPA selected option 4 to analyze and quantify the notion of "high volume." Specifically, EPA has compared and contrasted the wastes generated by mineral processing with those generated by the extraction and beneficiation of ores and minerals, and those from oil and gas production (i.e., other section 8002 wastes). See RCRA section 8002(m). In addition, the Agency has examined specific wastes currently regulated under Subtitle C to highlight the similarities and differences between these wastes and those addressed in this proposed rule. EPA believes that each of these three categories of wastes is relevant for purposes of comparison with mineral processing wastes, and that each comparison offers insight into the proper definition of the term "high volume."

Option 1 would compare each processing waste to the wastes that are (or were until studied) clearly and unambiguously within the Bevill exclusion, those from extraction and beneficiation of ores and minerals. EPA believes that this is a logical basis of comparison, and, accordingly, has examined the quantities of wastes generated by ore and mineral extraction and beneficiation and related them to the quantities of mineral processing wastes (see the docket for additional information).

The second option is to compare processing wastes with other special study wastes, such as those generated by oil and gas production. This is also a reasonable approach, given the special status of these wastes under RCRA, as amended. Moreover, oil and gas production is an *extractive* operation, in which a valuable natural resource is removed from its surroundings and collected for further refinement. As such, it has a number of obvious similarities with the extraction (mining) and subsequent beneficiation and processing of ores and minerals.

The third alternative would compare processing wastes with the existing universe of Subtitle C wastes. Although such a comparison is not directly related to the question at hand (because of the different regulatory environment afforded to "special" wastes under the Bevill Amendment), it could yield an interesting comparison between the wastes to which Subtitle C is applied and those for which Subtitle C is an option. Comparisons of this type, however, are problematic, both in theoretical and practical terms. One important question is how to define the universe of Subtitle C wastes to be used for comparative purposes. Alternatives

include examining all Subtitle C wastes, those that closely resemble mineral processing wastes with respect to physical form and chemical composition, those that are managed in ways similar to the common practices employed in the mineral processing industry, and doubtless, others. In practical terms, EPA is limited by data availability, and can only examine waste generation and management at Subtitle C facilities in fairly broad terms. Therefore, EPA has conducted only limited quantitative comparisons of listed Subtitle C wastes with the special wastes. These comparisons are not exhaustive, but demonstrate clearly that typical Subtitle C waste volumes are very different than those of many mineral processing wastes.

For example, EPA has assembled data on the generation of the top nine listed Subtitle C wastes on an aggregate national basis. These data are presented in Table 2. The largest-volume waste is spent pickle liquor from steel finishing, at just over four million metric tons per year. None of the other listed wastes (of which there are *several hundred*) is generated in volumes exceeding one million metric tons per year. As discussed below, this latter generation rate is *one-half* the quantitative total volume criterion used by EPA to designate high-volume processing wastes. Indeed, ten distinct mineral processing waste streams are generated in quantities exceeding one million metric tons per year, and some are generated at rates many times that. This indicates that at least some ore and mineral processing wastes are generated on a very different scale than are typical listed Subtitle C wastes.

TABLE 2.—TOP NINE LISTED HAZARDOUS WASTES (1985 DATA)^a

Hazardous Waste		Quantity of hazardous waste generated (1,000 MT/yr)
Code	Description	
K062.....	Spent pickle liquor from steel finishing.	4,070
K061.....	Emission control dust/sludge from primary steel production in electric furnaces.	914
K104.....	Combined wastewater streams from nitrobenzene/aniline production.	801
K013.....	Bottom stream from the acetonitrile column in acrylonitrile production.	707
K048.....	Dissolved air flotation (DAF) from the petroleum refining industry.	10,700

TABLE 2.—TOP NINE LISTED HAZARDOUS WASTES (1985 DATA)⁹—Continued

Hazardous Waste		Quantity of hazardous waste generated (1,000 MT/yr)
Code	Description	
K051.....	API separator sludge from the petroleum refining industry.	10,700
K011.....	Bottom stream from the wastewater stripper in acrylonitrile production.	687
K087.....	Decanter tank tar sludge from coking operations.	576
K016.....	Heavy ends or distillation residues from carbon tetrachloride production.	414
Total U.S.		245,129

⁹ Source: Development Planning and Research Associates, Inc. 1988. *1985 National Biennial Report of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA (Draft)*. Prepared for Office of Solid Waste, U.S. EPA.

¹⁰ Source: *Petroleum Refining Database*. 1987. Prepared from RCRA section 3007 questionnaires by Office of Solid Waste, U.S. EPA.

Moreover, when EPA examined the latest available data on the quantities of hazardous waste managed on-site at RCRA-regulated facilities, it found that only 180 facilities managing hazardous wastes on-site (well under ten percent of the total) handled more than 50,000 metric tons during this same period (as described below, 50,000 metric tons per year per facility is the other high volume cut-off that EPA has employed to identify high-volume processing wastes). These quantities refer to combined volumes of all hazardous wastes generated and managed on-site at the facilities (most of which are in the chemical and oil refining industries), and are probably dominated by relatively dilute aqueous waste streams. Most of the mineral processing waste streams proposed for retention within the Bevill exclusion today, however, are solid materials (e.g., slags), and in any case are evaluated individually rather than in aggregate at the facility level. Despite these factors, which tend to draw further distinctions between typical Subtitle C wastes and mineral processing wastes, any ore or mineral processing facility that generates and manages a waste on-site at a rate of greater than 50,000 metric tons per year would still be within the top ten percent of hazardous waste treatment, storage, or disposal (TSD) facilities nationwide in terms of volume of waste managed if the waste was to be regulated under Subtitle C.

5. Definition of High Volume Processing Waste

Based on a consideration of the factors outlined above, EPA decided that any waste generated from the processing of ores or minerals, as defined in Section II.A, above, that met either criterion 1 or criterion 2, below, would be designated a "high volume" processing waste:

(1) For a specific waste stream arising from mineral processing in any given mineral commodity sector (e.g., primary copper processing), the total quantity of the specific waste generated by all facilities in the United States in any one calendar year from 1982 through 1987 equals more than 2 million metric tons; or

(2) For a specific waste stream arising from mineral processing in any given mineral commodity sector, the specific waste stream is generated at an average rate (i.e., total quantity of the specific waste generated by all facilities in the United States in any one calendar year from 1982 through 1987 divided by the number of facilities generating the waste) of more than 50,000 metric tons per facility per year.

These criteria effectively and unambiguously distinguish the truly high volume ore and mineral processing wastes from those that are generated at lower rates, at least in those industry sectors for which EPA has adequate data to apply the criteria. As discussed below, the distribution of waste volumes within and across these sectors is essentially bimodal, with many sectors having one or a few high volume waste streams along with several other low volume waste streams. As a result, the criteria serve mainly to highlight these existing differences in volume rather than to draw arbitrary lines; changing either of the specific numeric criteria has little effect on which wastes are identified as being high volume. For example, lowering the total volume criterion from 2 million to 500,000 metric tons per year or raising it to 3 million metric tons per year would have no effect on the list of wastes proposed to be retained within the exclusion, while raising or lowering the average volume criterion by 10,000 metric tons per year per facility (a change of 20 percent) would affect the designation of, at most, one of approximately sixty waste streams examined in depth for today's proposal.

Further justification for setting a lower limit of 2 million metric tons per year on total waste generation volumes can be found in the lists of wastes that the Agency has considered to be "high volume" ever since the "special waste" concept was officially articulated in 1978. See 43 FR 58946. In addition, the wastes from ore and mineral extraction

and beneficiation, which are clearly within the exclusion, are generated by most commodity sectors at a rate of at least two million metric tons per year, as are the drilling wastes and produced waters from oil and gas production identified in section 8002(m) of RCRA.¹¹

Therefore, under today's proposal, individual mineral processing waste streams that are generated in the aggregate in quantities exceeding 2 million metric tons per year shall be retained within the Bevill exclusion. These wastes will be studied by EPA to determine whether regulation under Subtitle C is warranted.

At the same time, as discussed above, EPA recognizes that some mineral commodity sectors may comprise very few facilities, and hence, generate lower total waste quantities than others whose wastes and waste management problems at the individual facility level are otherwise very similar. Therefore, the Agency has explicitly incorporated a consideration of typical (average) waste quantities generated at the plant level into its definition of "high volume." The limit used (50,000 metric tons per facility per year) does not retain within the exclusion the vast majority of mineral processing wastes, and in fact retains only those that are generated on a different and considerably larger scale than both the other processing wastes and typical Subtitle C wastes, as discussed above. Here again, the limit that EPA uses approximates the lower end of the range of average waste quantities generated in mineral extraction and beneficiation¹² (oil and gas waste data are available only on a per-well basis and hence are not useful in establishing a quantitative limit for this criterion).

C. Criteria for Identifying "Low Hazard" Wastes from Ore and Mineral Processing

Based on the court's findings in *EDF v. EPA*, an ore or mineral processing waste must be a "special waste", that is, a "high volume, low hazard" waste, in order for it to be temporarily excluded from RCRA Subtitle C regulation by the Bevill Amendment. To determine whether a processing waste is of "low hazard", EPA began with three principles:

¹¹ U.S. EPA. 1985. *Op. cit.*

U.S. EPA. 1987. *Report to Congress on Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy; vol 1: Oil and Gas*. Washington: Office of Solid Waste and Emergency Response. EPA/530-SW-88-003.

¹² U.S. EPA. 1985. *Op. cit.*

(1) The purpose of a "low hazard" criterion is to assist in identifying the wastes that EPA is required by the Bevill Amendment to study so that actual hazard can be assessed;

(2) The "low hazard" criterion must be consistent with Congressional intent; and

(3) The "low hazard" criterion must be easily applied to the universe of high volume processing wastes using existing or easily obtainable information.

EPA considered two approaches to identifying "high volume" ore and mineral processing wastes that are "low hazard," and thus, should be temporarily excluded from Subtitle C regulation by the Bevill Amendment, as follows:

(1) Define excluded waste as any "high volume" processing waste that does not exhibit any of the characteristics of hazardous waste as defined in RCRA Subtitle C (EP-toxicity, corrosivity, reactivity, or ignitability); and

(2) Eliminate this criterion, and consider all "high volume" processing wastes to be temporarily excluded from Subtitle C regulation.

Today's proposal is based on the second approach listed above, i.e., EPA considers all wastes that meet the proposed "high volume" and "processing" waste criteria to be "special wastes" and thus, temporarily excluded from RCRA Subtitle C regulation by the Bevill Amendment. EPA takes this position because the Agency believes that the alternative approach is inappropriate as a basis for screening high volume wastes to determine the need for study in a Report to Congress. Moreover, option 1 is impractical because the data needed to implement it would not be available until detailed studies, such as those that would support the Report to Congress, have been conducted.

EPA believes that it would be inappropriate to use the existing hazardous waste characteristics as a basis for determining which high-volume processing wastes are "low hazard." When EPA promulgated hazardous waste regulations on May 19, 1980, that deleted the "special waste" category proposed in 1978, the Agency indicated

that a "special waste" category was no longer necessary because the originally proposed EP-toxicity and corrosivity characteristics for defining hazardous waste had been more narrowly defined, thus eliminating prospective Subtitle C regulation of most previously identified "special wastes." See 45 FR 33175.

When Congress adopted the Bevill Amendment, it instructed EPA to study wastes from the extraction, beneficiation, and processing of ores and minerals, prior to subjecting them to Subtitle C regulation; some of these wastes exhibit hazardous characteristics and would therefore fall under Subtitle C in the absence of the Bevill exclusion. Indeed, several of the extraction and beneficiation wastes already studied by EPA under sections 8002 (f) and (p) of RCRA fail one or more of the RCRA hazardous characteristics. Yet, EPA determined to not regulate any of these studied wastes under Subtitle C. On the same day that the Court of Appeals ordered EPA to propose today's rule, it upheld the Agency's regulatory determination for extraction and beneficiation wastes, explicitly rejecting the argument that if a waste fails a characteristic then it must be regulated under Subtitle C, and accepting EPA's contention that other factors can be considered in determining whether a high-volume mining waste should be permanently excluded from Subtitle C regulation. *Environmental Defense Fund v. EPA*, 852 F.2d 1309 (D.C. Cir. 1988). EPA believes that the Court would also recognize that the characteristic tests should not be the primary factors in determining whether a mineral processing waste is to be afforded the temporary exclusion provided by the Bevill Amendment.

In addition to examining Congressional intent and recent Court decisions, the Agency also considered the practicality of using the hazardous waste "characteristics" for identifying "high volume" wastes that are not "low hazard." Specifically, EPA examined the data available on mineral processing wastes, and concluded that the necessary data on waste characteristics are only rarely available, and, where available, are highly variable. Extensive study by EPA would therefore be

necessary before the Agency could apply these criteria to the high-volume processing wastes. Accordingly, the Agency also concluded that the implementation of a "low hazard" criterion based on RCRA Subtitle C hazardous waste "characteristics" would not be feasible.

EPA also briefly considered developing a substitute test for determining whether large-volume processing wastes are low hazard. However, EPA does not have an appropriate alternative test currently in place. Further, EPA has even fewer data to characterize the hazards of large-volume processing wastes using alternate tests. In light of the very short time granted by the Court of Appeals to propose this reinterpretation, EPA found it infeasible to develop an alternate test and collect the necessary data.

For the reasons stated above, EPA believes that it is both necessary and appropriate that the emphasis in defining mineral processing wastes that are temporarily excluded from Subtitle C regulation by the Bevill Amendment be on the volume of waste generated. This is the same conclusion that EPA reached in 1985 when the Agency proposed to reinterpret the scope of the Bevill Amendment and stated that:

Based on the various indications of Congressional intent described in the text, EPA believes it is reasonable to rely primarily on volumes of waste generated to determine which wastes should have been excluded by the Bevill Amendment (50 FR 40294).

D. Proposed Bevill-Excluded Processing Wastes

Based upon available data, EPA proposes to retain the wastes presented in Table 3, below, within the Bevill exclusion, because they meet the criteria for "special" mineral processing wastes articulated in this proposal. The Agency encourages members of industry and the public to submit, in public comment, descriptions of and quantitative data regarding any additional specific waste streams that they believe meet these criteria for study by EPA prior to the final resolution of their regulatory status.

TABLE 3.—SPECIAL WASTES GENERATED FROM MINERAL PROCESSING THAT ARE PROPOSED FOR RETENTION WITHIN THE BEVILL EXCLUSION

Commodity sector and waste type	Number of facilities	Total estimated industry-wide waste generation (MT/yr) ^a	Average waste generation for facility (MT/yr) ^b
Copper: ^c			
Smelting Slag.....	8	3,652,080	456,510
Process Wastewater.....	10	530,500	53,050
Acid Plant Blowdown.....	7	4,399,710	628,530
Bleed Electrolyte.....	7	444,600	63,514
Lead: ^c Smelting Slag.....	5	328,630	65,726
Zinc: ^c			
Process Wastewater.....	2	1,451,000	725,500
Acid Plant Blowdown.....	4	305,800	76,450
Bauxite: ^c Red and Brown Muds.....	4	2,697,000	674,250
Other: ^d			
Phosphogypsum.....	27	47,000,000	1,740,741
Elemental Phosphorous Slag.....	5	3,000,000	600,000
Iron Blast Furnace Slag.....	24	9,805,000	408,542
Iron Blast Furnace APC Dust/Sludge.....	24	3,197,000	133,208
Lime Kiln APC Dust.....	117	3,300,000	28,205
Waste Acids from Titanium Dioxide Production ^e	8	1,375,000	171,825
Chromite Ore Roasting/Leaching Slag ^f	2		> 50,000

^a Total Estimated Industry-Wide Waste Generation=(Facility Capacity) * (Projected Average Long-term Utilization) * (Generation Rate). Source: EPA estimates based on data provided by the U.S. Bureau of Mines, PEDCo Environmental Incorporated, Radian Incorporated, and individual facility operators.

^b Average Waste Generation per Facility=(Total Estimated Industry-Wide Waste Generation)/(Number of Facilities).

^c Detailed data are available on wastes in these commodity sectors because EPA was about to complete and submit a required Report to Congress addressing their management when today's proposed rule was mandated by the Court. Data on the other wastes remaining within the exclusion are far more limited.

^d Industry-wide waste totals were obtained from a prior proposed rulemaking (50 FR 40292). Number of facilities generating each waste were obtained from the Bureau of Mines (personal communication, 1988).

^e Data on waste generation rates were obtained from PEI Associates, Inc., 1984. *Overview of Solid Waste Generation, Management, and Chemical Characteristics: Primary Antimony, Magnesium, Tin, and Titanium Smelting and Refining Industries*. Prepared for Industrial Environmental Research Laboratory, Office of Research and Development, U.S. EPA.

^f Total waste generation data are unavailable. Average waste generation is believed to be greater than 50,000 MT/yr. based upon production volumes and quantities of feedstocks consumed.

Most mineral processing wastes on which the Agency has information do not conform to the "high volume" criteria used to compile the list presented in Table 3. This includes most that has been proposed for study under the Bevill Amendment in public comment on the 1985 proposed reinterpretation. In addition, none of the six smelting wastes that were recently relisted as hazardous wastes satisfy the high volume criteria described here. Within the five metallic ore processing sectors that have been most extensively studied by EPA (aluminum, bauxite, copper, lead, and zinc), the range of total sector-wide volumes of waste streams that are not retained within the proposed exclusion is very broad, from 100 to 228,000 metric tons per year, though the upper end of this range is a full order of magnitude lower than the cutoff for meeting the high volume criterion. Average generation rates at individual plants range from 20 to 38,000 metric tons per year. Only one waste stream (wastewater treatment plant sludge in the copper sector) is generated in volumes that approach the limit necessary to remain within the exclusion (average of 50,000 MT/Yr).

All other waste streams arising from these five metal processing sectors are

generated at an average of less than 10,000 metric tons per year, and most are generated in the *hundreds* of tons per facility per year.

Therefore, EPA believes that it has correctly and unambiguously identified the wastes that were of concern to Congress when it enacted the Bevill amendment, and has, at the same time, presented explicit criteria that will enable members of the regulated community and the public to evaluate whether any additional wastes should be added to the list in Table 3 for the continued regulatory exclusion and study provided by the Bevill amendment. The Agency has identified and proposed for temporary exclusion *all* of the wastes from ore and mineral processing that, according to available data, meet these criteria. In the absence of new information submitted during the public comment period, EPA does *not* anticipate that additional wastes will be proposed for exclusion under the Bevill Amendment when this proposed rule is *finalized* on February 15, 1989.

Accordingly, EPA hereby solicits public comment (and supporting data) on the approach described in this proposal, on the specific numerical criteria, on the specific waste streams proposed for continued exclusion from Subtitle C

under Bevill, and on any *additional* candidate Bevill wastes. EPA will address all major comments received during the 30-day comment period prior to finalizing the rule.

III. Regulatory Impacts on This Proposal

When this rule is promulgated in final form, mineral processing wastes that have been temporarily excluded from regulation under Subtitle C of RCRA since 1980 and that do not meet the criteria for "special wastes," as described above, may now be subject to Subtitle C requirements beginning, at the latest, six months after publication of the final rule in those states that do not have authorization to administer their own hazardous waste program in lieu of EPA (see RCRA section 3010). These requirements include determining whether the solid waste(s) exhibit hazardous characteristics (40 CFR 262.11), and, if so would require the operator to obtain an EPA identification number (40 CFR 262.34), comply with recordkeeping and reporting requirements (40 CFR 262.40-262.43), and submit an application for a treatment, storage, or disposal permit (RCRA section 3005 "Part A" permit) for interim status if the waste is managed onsite.

Subsequently, these treatment, storage, or disposal (TSD) facilities would have to apply for a final permit under RCRA Part B provisions. Completion of Part B applications would require individual facilities to develop and compile information on their on-site waste management operations including, but not limited to the following activities: Ground-water monitoring (if waste management on land is involved); manifest systems, recordkeeping, and reporting; closure, and possibly, post-closure requirements; and financial responsibility requirements. The Part B applications may also require development of engineering plans to upgrade existing facilities.

In addition, many of these facilities will, in the future, be subject to land disposal restriction (LDR) standards. EPA will promulgate LDR standards for all characteristic hazardous wastes by May 8, 1990. Under EPA regulations, these standards must require treatment of the affected wastes to a level or by a method that reflects the use of Best Demonstrated Available Technology (BDAT) before the wastes can be disposed on the land. Thus, one future implication of today's proposal (when finalized) will be the ban on land disposal of these wastes unless they are appropriately treated prior to such disposal. Also, facilities with existing permits and permit applications that are currently treating, storing, or disposing of wastes that will be subject to Subtitle C regulation when this rule is promulgated, will have to amend or modify their permits or applications to include provisions applicable to managing these newly non-excluded wastes.

IV. Public Participation

Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer, Office of Solid Waste, (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public hearing is at the U.S. Environmental Protection Agency, Conference Room 13, 401 M Street SW., Washington, DC. The hearing will begin at 10:00 a.m. with registration beginning at 9:30 a.m. The hearing will end at noon unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict these to 15 minutes, and are requested to provide written comments for inclusion in the official record.

V. Effect on State Authorizations

This proposal, if promulgated, will not be automatically effective in authorized States, since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, this reinterpretation will be immediately applicable only in those few States that do not have interim or final authorization to operate their own hazardous waste programs in lieu of the Federal program. In authorized States, the reinterpretation and the regulation of non-excluded processing wastes will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e) requires States that have final authorization to revise their programs to adopt equivalent standards by July 1, 1990 if only regulatory changes are necessary, or by July 1, 1991 if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements in that State.

States that submit an official application for final authorization less than 12 months after the effective date of the reinterpretation may be approved without including an equivalent provision (i.e., to address "special" mineral processing wastes) in the application. However, once authorized, a State must revise its program to include an equivalent provision within the time period discussed above. The process and schedule for revisions to State programs are described in the amendment to 40 CFR 271.21 published on May 22, 1984. See 49 FR 21768. (See also 51 FR 33722, Sept. 22, 1986.)

VI. Compliance With Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is 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, individuals, industries, Federal, State, and 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.

Section 8 of Executive Order 12291 exempts an agency from the requirements of the order when compliance would conflict with deadlines imposed by statute or judicial order. Accumulating the information and conducting the analyses required to fully comply with the requirements of sections 2 and 3 takes many months. Therefore, compliance with these requirements is not possible within the schedule specified by the Court for this rulemaking.

Although the Agency cannot conduct a complete economic impact analysis within the period of time allowed by the Court, several economic impact analyses conducted in support of previous Agency rulemaking activity suggest that today's proposal does not meet the criteria for a "major" rule.

In 1985, EPA conducted cost and economic impact studies to analyze the potential cost and market impacts of the proposed reinterpretation of the Bevill Amendment on metal processing sectors and to evaluate possible impacts on small businesses. These studies involved detailed compliance cost and economic impact analyses for ten major primary metal smelting and refining sectors, and less detailed impact screening analyses for 21 other metals sectors,¹³ containing a total of 110 operating facilities that produced 97 percent of total U.S. nonferrous and ferroalloy product tonnage in 1983. The ten major sectors were aluminum, copper, lead, zinc, ferroalloys, magnesium, titanium metal, titanium dioxide, zinc oxide, and zirconium/hafnium. EPA determined that the 1985 proposed reinterpretation would impose annual compliance costs of approximately \$20 million on these ten sectors, and therefore would not constitute a "major" rule. The 1985 studies did not address risk to human health and the environment posed by the wastes generated and the waste management practices employed in these commodity sectors.

In the preamble to the 1985 reinterpretation, EPA also discussed

¹³ Policy Planning & Evaluation, Inc. 1985. *Economic Impact Analysis of Proposed Reinterpretation of Solid Waste Exemption for the Primary Smelting and Refining Industry*. Office of Solid Waste, U.S. EPA.

Policy Planning & Evaluation, Inc. 1985. *Economic Impact Analysis of Proposed Reinterpretation of Solid Waste Exemption for the Primary Smelting and Refining Industry (Supplemental Analysis of 21 Minor Metals Industries)*. Office of Solid Waste, U.S. EPA.

ICF Incorporated. 1985. *Hazardous Waste Management Costs in Selected Primary Smelting and Refining Industries*. Office of Solid Waste, U.S. EPA.

economic impacts on the ten major nonferrous metal- and ferroalloy-producing sectors, including effects on production costs, prices, international trade, total investment requirements, return on investment, and potential for plant closures and job losses. See 50 FR 40299. The analysis indicated that the average increases in production costs or prices would be small to moderate (less than two percent) for nine of the ten sectors. On average across all ten sectors, the annualized costs of the 1985 proposed reinterpretation amounted to less than 0.4 percent of production costs or prices. Because of these very limited effects on prices, the study did not explore the possible effects of the proposed rule on international trade.

To examine effects on investment, EPA estimated average capital investment costs of compliance as a percent of normal capital expenditures, and found that this ratio ranged from one percent (in aluminum and copper sectors) to 75 percent (in the zinc sector). The effect of today's rule would be significantly lower for the zinc sector than that of the 1985 proposed reinterpretation because acid plant blowdown and process wastewater (which were not proposed for continued exclusion in 1985) accounted for a large part of the estimated Subtitle C compliance costs of the 1985 proposal.

The results for return on investment showed a majority of sectors with maximum impacts on profit of about two percent. Firms in the zinc, ferroalloys, and titanium dioxide sectors, however, would have experienced larger changes in return on investment had the 1985 proposed reinterpretation been promulgated. Both the zinc and titanium dioxide sectors generate high volume

waste streams (accounting for a significant fraction of any incremental RCRA waste management costs) that would be temporarily exempted from Subtitle C regulation as a result of today's proposed rule. Finally, EPA's plant closure and employment loss analysis indicated that the 1985 proposed reinterpretation might result in the closure of one plant (in the ferroalloys sector) and the concomitant loss of approximately 80 jobs.

In 1986, in response to comments regarding the 1985 impact studies, EPA made extensive revisions to its 1985 cost and impact estimates for the major primary metals sectors. Although the revisions resulted in increases in the estimated costs for most sectors, total after tax compliance costs for the facilities in aggregate were around \$25 million, still well below the \$100 million annual cost threshold. Accordingly, the Agency considered its initial judgment, that the 1985 proposed reinterpretation was not a major rule, validated.

There are a number of differences between the 1985 proposed reinterpretation and today's proposed rule. In 1985, the only processing wastes that would have been temporarily excluded from Subtitle C regulation under the provisions of the Bevill Amendment were phosphogypsum, bauxite refining muds, primary metal smelting slags, and slag from elemental phosphorous reduction. Today's notice establishes an expanded list of the wastes that would remain within the exclusion as special wastes. Waste streams that were included in the 1985 cost and impact estimates in 1985 but that would be excluded under today's proposal include process wastewater from primary copper smelting/refining,

bleed electrolyte from primary copper refining, blowdown from acid plants at primary copper smelters, blowdown from acid plants at primary zinc smelters, wastewater from primary zinc smelting, and waste acids from titanium dioxide production. These additional proposed exclusions from immediate Subtitle C regulation imply substantial reductions in costs and economic impacts from those estimated for the 1985 reinterpretation.

In 1988, EPA analyzed in depth the five major smelting and refining sectors that accounted for approximately 80 percent of total 1985 nonferrous metal production. These sectors comprise the aluminum, bauxite, copper, lead, and zinc processing industries. The 1988 estimates represent the most recent and reliable assessment of the costs and economic impacts of Subtitle C compliance for these sectors, after factoring out the effects of the listing of the six hazardous smelter wastes and of the high volume wastes identified above, which will be subject to further study and regulatory consideration.

Based on this 1988 analysis, EPA estimates that the five major metal commodity sectors would incur before-tax incremental annual costs for Subtitle C compliance of about \$11 million under today's proposal. The annual revenue requirements by sector and the number of affected facilities are displayed in Table 4. In total, the Agency estimates that the incremental compliance cost is a less than 10 percent increase over the current costs of waste management, and only 33 of 57 operating facilities would experience increased waste management costs of any kind.

TABLE 4.—COST IMPACTS OF TODAY'S PROPOSAL ON FIVE MAJOR METALLIC ORE PROCESSING SECTORS

Sector	Number of facilities	Number of affected facilities	Quantities of potentially hazardous waste (MT/yr.)	Incremental annual revenue requirement (\$1,000/yr.)	Percent of total current management costs
Copper:					
Electrowinning	10	0	0	0	0
Smelting and/or Refining	12	4	157,480	2,603	11
Zinc	5	4	94,712	5,646	16
Lead	5	4	12,780	319	11
Aluminum	24	21	110,246	2,574	9
Bauxite	4	0	0	0	0
Total	57	33	375,218	11,142	10

Although EPA has not updated its analyses for the remaining sectors of the metals industry, the Agency believes that the impacts in these sectors will be

roughly proportional to those predicted for the five major sectors.

In terms of economic impact, in 1988 the Agency calculated two financial ratios for the five major nonferrous

metal-producing industry sectors. These ratios are: Annual revenue requirement (incremental compliance cost) as a percentage of value of shipments, and new capital investment needed for

regulatory compliance as a percentage of average annual investment.

The first ratio measures the maximum potential price rise if the industry is able to pass all increased costs through to consumers or the maximum amount by which before-tax profits will decline if no costs can be recovered by increasing prices. The second ratio allows a comparison between new capital

required and the amount of new investment that the industry historically undertakes.

The results are presented in Table 5 and indicate that for the five industry sectors the incremental annual revenue requirements would average 0.1 percent of the value of shipments. The only industry with a ratio greater than one percent is the zinc sector with a ratio of

1.7 percent. The average compliance capital cost would average 0.1 percent of historical capital investment across all five sectors, indicating a negligible effect on the firms' capital investment decisions. The potential impacts on several of the remaining 21 metals sectors, however, is unclear because EPA does not have sufficient data to undertake a detailed analysis.

TABLE 5.—ECONOMIC IMPACTS OF TODAY'S PROPOSAL ON FIVE MAJOR METALLIC ORE PROCESSING SECTORS

Sector	Incremental Annual Cost (\$1,000/yr.)	Total incremental capital cost (\$1,000)	Ratio of Inc. ARR to value of shipments	Ratio of Inc. Capital cost to new investment
Copper.....	2,603	8,152	0.05	0.02
Zinc.....	5,646	22,213	1.72	2.60
Lead.....	319	1,105	0.012	0.13
Aluminum.....	2,574	6,681	0.05	0.05
Bauxite.....	0	0	n/a	n/a
Total.....	11,142	38,151	0.10	0.08

The costs and impacts that EPA has estimated to date have not included considerations of the possible effects of the land disposal restrictions and corrective action requirements contained in the provisions of the Hazardous and Solid Waste Amendments (HSWA) of 1984.

In addition, EPA has little or no data on the non-metallic ore and mineral processing sectors, such as elemental phosphorous production, some of which generate wastes that would be temporarily excluded from Subtitle C under today's proposed rule. At the same time, many of these facilities also generate small volume wastes that would be affected by the proposal. Therefore, the Agency is unable to assess the impact of today's proposal on facilities and firms in the non-metallic ore and mineral processing industry sectors, and hereby requests public comment on any such sectors that might be affected by this proposal because they generate low volume, characteristic hazardous wastes.

This proposal was submitted to the Office of Management and Budget (OMB) for review as required by section 6 of Executive Order 12291. Any comments for OMB to EPA and any response to those comments are available for viewing at the RCRA Docket.

VII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in

Section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

Section 608 of the Act allows an Agency head to waive or delay completion of the screening analysis in response to an emergency that makes compliance with the requirements of section 603 on a timely basis impracticable. In this instance, the court-imposed deadline for publication of this proposed rule prevents EPA from conducting a complete analysis of potential impacts of the rule on small entities in time to support this proposed rule. The Agency did, however, conduct a detailed screening analysis for all nonferrous smelting and refining and ferroalloy-producing facilities as part of the 1985 proposal to reinterpret the mining waste exclusion. Based on that analysis, the Agency determined that small business ownership (as defined by the Small Business Administration) was rare in metals processing, and further, that in those few sectors (ferroalloys, gold and silver refining) in which facilities were not all owned by large businesses or conglomerates, the small enterprises were generally of a type that would be either unaffected or not significantly affected by the proposed reinterpretation (50 FR 40300).

EPA has not studied enterprise ownership patterns or the potential cost impacts of today's rule for the non-metallic ore and mineral processing sectors. Nevertheless, based on general knowledge of the raw material

processing industries, the Agency believes that the general conclusions reached for the metals sectors should apply also to the non-metals sectors and that there would not be impacts on a substantial number of small business enterprises sufficient to warrant additional application of the Regulatory Flexibility Act. The Agency solicits comment and further information relating to this conclusion.

List of Subjects in 40 CFR Part 261

Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements.

Dated: October 14, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. Section 261.4, paragraph (b)(7), is revised to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including

phosphate rock and overburden from the mining of uranium ore. For purposes of this paragraph, solid waste from the processing of ores and minerals includes only the following materials:

- (i) Slag from primary copper smelting;
- (ii) Process wastewater from primary copper smelting/refining;
- (iii) Blowdown from acid plants at primary copper smelters;
- (iv) Bleed electrolyte from primary copper refining;

- (v) Slag from primary lead smelting;
- (vi) Blowdown from acid plants at primary zinc smelters;
- (vii) Process wastewater from primary zinc smelting/refining;
- (viii) Red and brown muds from bauxite refining;
- (ix) Phosphogypsum from phosphoric acid production;
- (x) Slag from elemental phosphorous production;
- (xi) Iron blast furnace slag;

- (xii) Air pollution control dust/sludge from iron blast furnaces;
- (xiii) Waste acids from titanium dioxide production;
- (xiv) Air pollution control dust from lime kilns; and
- (xv) Slag from roasting/leaching of chromite ore.

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Registered Federal Letter

Thursday
October 20, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 156

State Block Grant Pilot Program; Final
Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 156**

[Docket No. 25723; Amdt. No. 156-1]

State Block Grant Pilot Program**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comments.

SUMMARY: This final rule sets forth regulations to implement the State block grant pilot program included in recent Congressional legislation. The regulations are intended to provide guidance to the States regarding the application process for, and administration of, the 2-year State block grant pilot program. The final rule is necessary in order to comply with the statutory provision that requires the Secretary of Transportation to promulgate regulations to implement the State block grant pilot program.

DATES: The final rule is effective on November 21, 1988. Comments must be received on or before November 21, 1988.

ADDRESS: Comments on this final rule may be delivered or mailed, in duplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25723, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments submitted on these rules must be marked: Docket No. 25723. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Beisse, Office of Airport Planning and Programming, Grants-in-Aid Division, Program Guidance Branch (APP-510), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8826.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The regulations contained in this final rule implement the State block grant pilot program provided by Congress in the Airport and Airway Safety and Capacity Expansion Act of 1987. The regulations simply state the application requirements for the State block grant pilot program mandated by Congress that will result in block grants being awarded to three States. Therefore, the final rule is being adopted without notice and an opportunity for prior public comment. However, the

Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting any written data, views, or comments as they may desire. Comments must include the regulatory docket or amendment number identified in this final rule and be submitted in duplicate to the address above. All comments received will be available in the Rules Docket for examination by interested persons. The regulations may be changed in light of the comments received on this final rule.

Commenters who want the Federal Aviation Administration (FAA) to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 25723." The postcard will be date stamped by the FAA and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On December 30, 1987, Congress passed the Airport and Airway Safety and Capacity Expansion Act of 1987. Section 116 of that Act amended the Airport and Airway Improvement Act of 1982, by adding new section 534 entitled "State Block Grant Pilot Program" (49 U.S.C. App. 2227). That section states:

(a) Promulgation of Regulations; Effective Period.—Not later than 180 days after the date of the enactment of this section, the Secretary shall promulgate regulations to implement a State block grant pilot program to become effective on October 1, 1989. Such program shall not be effective after September 30, 1991.

(b) Assumption of Certain Responsibilities.—Such regulations shall provide that the Secretary may designate not more than 3 qualified States to assume administrative responsibility for all airport grant funding available under this title, other than funding which has been designated for use at primary airports.

(c) Selection of State Participants.—The Secretary shall select States for participation in such program on the basis of applications submitted to the Secretary. The Secretary shall select a State only if the Secretary determines that the State—

(1) has an agency or organization capable of administering effectively any block grant made under this section;

(2) uses a satisfactory airport system planning process;

(3) uses a programming process acceptable to the Secretary;

(4) has agreed to comply with Federal procedural and other standard requirements for administering any such block grant; and

(5) has agreed to provide the Secretary with such program information as the Secretary may require.

Before determining that any planning process is satisfactory or any programming process is acceptable, the Secretary shall ensure that such process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding to which project funds will be provided.

(d) Review and Report.—The Secretary shall conduct an on-going review of the program established under this section, and shall, not later than 90 days before its scheduled termination, report to Congress the results of such review, together with recommendations for further action relating to the program.

Pursuant to the Congressional legislation and applicable delegations of authority, three States selected by the Administrator will administer the Fiscal Year 1990 and 1991 airport grant programs, for nonprimary airports in those States. The three States will be responsible for project selection, administration, and compliance consistent with applicable Federal law. Due to the legislative requirement that the three States agree to comply with Federal procedural and other standard grant administrative requirements, the block grant agreement for the pilot program will contain appropriate grant assurances similar to those contained in the current grant agreements signed by airport sponsors who are awarded grants by the Administrator. The FAA will provide an application form and program guidance material to any State that submits a letter expressing interest in participating in the State block grant pilot program.

States that are selected by the Administrator to participate in the block grant pilot program must comply with

the statutory and regulatory requirements that currently govern airport grant programs. These requirements will be specified in the block grant agreements. Pursuant to Congressional mandate contained in the legislation, the three States selected by the Administrator will assume administrative responsibility, currently exercised by the FAA, for all grant funding available under the legislative amendment and annual appropriation Acts at nonprimary airports within the State. Nonprimary are those airports enplaning 10,000 or fewer passengers annually. Similarly, the legislative amendment requires that the three States agree to comply with Federal procedural and other standard requirements in administering block grants. For example, States will be required to have an accounting system that accurately reflects expenditures of the State block grant. Likewise, the States must comply with the requirements of the National Environmental Policy Act.

Reason for No Notice

The regulations contained in this final rule are needed to implement the State block grant pilot program mandated by Congress in an amendment to the 1982 Act contained in the Airport and Airway Safety and Capacity Expansion Act of 1987. The regulations contained in this final rule merely implement a voluntary portion of the existing airport improvement grant program. In addition, the rules contained in this amendment are purely procedural regulations that govern the application process. For these reasons, notice and public comment procedures are unnecessary. In addition, publication of a notice for prior public comment on the final rule would not reasonably be anticipated to result in the receipt of useful information regarding the regulations because Congress dictated the method by which the Administrator shall determine which States are selected for the State block grant pilot program. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication of the final rule is being provided.

Economic Assessment

This final rule sets forth the application procedures that apply to the 2-year State block grant pilot program that is a part of the existing airport improvement grant program. Because of the procedural nature of the regulations, no economic impact is expected to result from the promulgation of the final rule. Accordingly, a full Regulatory Evaluation is not warranted and a

regulatory evaluation has not been prepared prior to publication of this final rule. Because the final rule contains purely procedural regulations that only apply to the application process, the cost, if any, of complying with the final rule is minimal. Therefore, I certify that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980.

Reporting and Recordkeeping

The FAA anticipates that there will be no discernible reporting or recordkeeping impact resulting from implementation of the State block grant pilot program. It is difficult to estimate any impact on paperwork burdens because the three States will implement and administer the grant program and the disbursement of grant funds for certain airport projects. It is possible that overall paperwork burdens may be reduced in comparison to the paperwork burden associated with airport development projects administered by the FAA. However, any reduction in paperwork burden is wholly dependent on the efficiency of the method by which the States implement and administer the block grant program. Certainly, the FAA expects no increase in paperwork burdens since the FAA and the States will be using a similar mechanism to that which is currently used for airport development projects. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the FAA received approval of the reporting and recordkeeping requirements for the airport grants program on April 15, 1988 [Control No. 2120-0065]. The State block grant pilot program will not require amendment of Control No. 2120-0065.

Federalism Implications

The final rule contained herein would directly affect the States, would affect the relationship between the national government and the States, and would affect the distribution of power and responsibilities among the various levels of government. Pursuant to Congressional legislation, the three States selected by the Administrator would assume administrative responsibility for all airport funding for nonprimary airports awarded under the Airport and Airway Improvement Act of 1982. Traditionally, Congress has vested administrative responsibility for Federally-funded airport development in the Administrator, as delegated by the Secretary of Transportation. The three States selected for participation in the State block grant pilot program will have maximum administrative

discretion to use monies awarded under this program, consistent with the legislative requirement to comply with applicable Federal procedural and other standard requirements for administering eligible projects at eligible airports. The Congressional legislation that creates the State block grant program specifies a termination date of September 30, 1991 and specifies criteria to be used by the Administrator in the selection of the three participating States. For these reasons, and the fact that participation by any State is not mandatory, the FAA believes that the participating States will have the ability to fulfill the purposes of the program without adverse effects on other State governmental functions. Thus, in accordance with Executive Order 12612, I certify that the regulations contained in this final rule have been assessed in light of, and are consistent with, the principles, criteria, and requirements of that Executive Order. However, the FAA does not believe that further analysis of the Federalism implications, and preparation of a Federalism Assessment, is warranted because the regulations implement an express Congressional mandate to initiate the limited State block grant pilot program.

Conclusion

Because the revisions contained in this final rule are expected to have minimal economic impact, the FAA has determined that the final rule is not a major regulation under Executive Order 12291. Also, this regulation is not considered to be significant under the DOT Regulatory Policies and Procedures. Since the cost of complying with these rules is minimal, I certify, under the criteria of the Regulatory Flexibility Act of 1980, that these rules will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 156

Airports, Airport funding, Airport improvement, Airport development, Block grants, Grant programs transportation.

The Amendment

Accordingly, the Federal Aviation Administration amends the Federal Aviation Regulations by adding a new Part 156 (14 CFR Part 156), effective November 21, 1988, to read as follows:

PART 156—STATE BLOCK GRANT PILOT PROGRAM

- Sec.
156.1 Applicability.
156.2 Letters of interest.

Sec.

- 156.3 Application and grant process.
- 156.4 Airport and project eligibility.
- 156.5 Project cost allowability.
- 156.6 State program responsibilities.
- 156.7 Enforcement of State block grant agreements and other related grant assurances.

Authority: 49 U.S.C. App. 2201 (as amended, 49 U.S.C. App. 2227, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 CFR 1.47 (f) and (k) (Regulations of the Office of the Secretary of Transportation).

PART 156—STATE BLOCK GRANT PILOT PROGRAM

§ 156.1 Applicability.

(a) This part applies to grant applicants for the State block grant pilot program and to those States receiving block grants available under the Airport and Airway Improvement Act of 1982, as amended.

(b) This part sets forth—

- (1) The procedures by which a State may apply to participate in the State block grant pilot program;
- (2) The program administration requirements for a participating State;
- (3) The program responsibilities for a participating State; and
- (4) The enforcement responsibilities of a participating State.

§ 156.2 Letters of interest.

(a) Any state that desires to participate in the State block grant pilot program shall submit a letter of interest, by November 30, 1988, to the Associate Administrator for Airports, Federal Aviation Administration, 800 Independence Avenue SW., Room 1000E, Washington, DC 20591.

(b) A State's letter of interest shall contain the name, title, address, and telephone number of the individual who will serve as the liaison with the Administrator regarding the State block grant pilot program.

(c) The FAA will provide an application form and program guidance material to each State that submits a letter of interest to the Associate Administrator for Airports.

§ 156.3 Application and grant process.

(a) A State desiring to participate shall submit a completed application to the Associate Administrator for Airports.

(b) After review of the applications submitted by the States, the Administrator shall select three States for participation in the State block grant pilot program.

(c) The Administrator shall issue a written grant offer that sets forth the terms and conditions of the State block grant agreement to each selected State.

(d) A State's participation in the State block grant pilot program begins when a State accepts the Administrator's written grant offer in writing and within any time limit specified by the Administrator. The State shall certify, in its written acceptance, that the acceptance complies with all applicable Federal and State law, that the acceptance constitutes a legal and binding obligation of the State, and that the State has the authority to carry out all the terms and conditions of the written grant offer.

§ 156.4 Airport and project eligibility.

(a) A participating State shall use monies distributed pursuant to a State block grant agreement for airport development and airport planning, for airport noise compatibility planning, or to carry out airport noise compatibility programs, in accordance with the Airport and Airway Improvement Act of 1982, as amended.

(b) A participating State shall administer the airport development and airport planning projects for airports within the State.

(c) A participating State shall not use any monies distributed pursuant to a State block grant agreement for integrated airport system planning, projects related to any primary airport, or any airports—

- (1) Outside the State's boundaries; or
- (2) Inside the State's boundaries that are not included in the National Plan of Integrated Airport Systems.

§ 156.5 Project cost allowability.

(a) A participating State shall not use State block grant funds for reimbursement of project costs that would not be eligible for reimbursement under a project grant administered by the FAA.

(b) A participating State shall not use State block grant funds for reimbursement or funding of administrative costs incurred by the State pursuant to the State block grant program.

§ 156.6 State program responsibilities.

(a) A participating State shall comply with the terms of the State block grant agreement.

(b) A participating State shall ensure that each person or entity, to which the State distributes funds received pursuant to the State block grant pilot program, complies with any terms that the State block grant agreement requires to be imposed on a recipient for airport projects funded pursuant to the State block grant pilot program.

(c) Unless otherwise agreed by a participating State and the Administrator in writing, a participating State shall not delegate or relinquish, either expressly or by implication, any State authority, rights, or power that would interfere with the State's ability to comply with the terms of a State block grant agreement.

§ 156.7 Enforcement of State block grant agreements and other related grant assurances.

The Administrator may take any action, pursuant to the authority of the Airport and Airway Improvement Act of 1982, as amended, to enforce the terms of a State block grant agreement including any terms imposed upon subsequent recipients of State block agreement funds.

Issued in Washington, DC on October 17, 1988.

T. Allan McArtor,
Administrator.

[FR Doc. 88-24242 Filed 10-19-88; 8:45 am]

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H.R. 4857/Pub. L. 100-495

To amend the Job Training Partnership Act to make a technical change. (Oct. 17, 1988; 102 Stat. 2454; 1 page) Price: \$1.00

S. 328/Pub. L. 100-496

Prompt Payment Act Amendments of 1988. (Oct. 17, 1988; 102 Stat. 2455; 12 pages) Price: \$1.00

S. 555/Pub. L. 100-497

Indian Gaming Regulatory Act. (Oct. 17, 1988; 102 Stat. 2467; 22 pages) Price: \$1.00

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