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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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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: January 30, 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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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 699]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 22 through December 28, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 699 (7 CFR part 907) is effective for the period from December 22 through December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 123 handlers of California-Arizona navel orange subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988–89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988–89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989–90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988–89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989–90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** [54 FR 42966]. The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received, and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 19, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor, none opposing, and two abstaining, that 600,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989–90 marketing policy. This recommended amount is 400,000 cartons less than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 600,000 cartons, 570,000 are allotted for District 1, and 30,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on December 14, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 2,290,000 cartons compared with 2,030,000 cartons shipped during the week ending on December 15, 1988. Export shipments totaled 195,000 cartons compared with 138,000 cartons shipped during the week ending on December 15, 1988. Processing and other uses accounted for 486,000 cartons compared with 470,000 cartons shipped during the week ending on December 15, 1988.

Fresh domestic shipments to date this season total 10,995,000 cartons compared with 8,044,000 cartons shipped by this time last season. Export shipments total 1,385,000 cartons compared with 645,000 cartons shipped by this time last season. Processing and other use shipments total 2,623,000 cartons compared with 1,926,000 cartons shipped by this time last season.

For the week ending on December 14, 1989, regulated shipments of navel oranges to the fresh domestic market were 2,198,000 cartons on an adjusted allotment of 1,986,000 cartons which resulted in net overshipments of 212,000 cartons. Regulated shipments for the current week (December 15 through December 21) are estimated at 2,045,000 cartons on an adjusted allotment of 1,847,000 cartons. Thus, overshipments of 198,000 cartons could be carried over into the week ending on December 28, 1989.

The average f.o.b. shipping point price for the week ending on December 14, 1989, was $7.69 per carton based on a reported sales volume of 1,985,000 cartons compared with last week's average of $7.45 per carton on a reported sales volume of 1,580,000 cartons. The season average f.o.b. shipping point price to date is $8.10 per carton. The average f.o.b. shipping point price for the week ending on December 15, 1988, was $8.58 per carton; the season average f.o.b. shipping point price at this time last season was $9.11 per carton.

The Committee reports that overall demand for navel oranges has fallen sharply this week. Inventories are high and fruit is not moving well. It is also a short selling week due to the Christmas holiday. In addition, harsh weather conditions continue to affect the East Coast and Midwest markets.

The 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 22 through December 28, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 19, 1989, and this action needs to be effective for the regulatory week which begins on December 22, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective

time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. Section 907.999 is added to read as follows:

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

§ 907.999 Navel Orange Regulation 699.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 22 through December 28, 1989, is established as follows:

(a) District 1: 570,000 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 30,000 cartons;
(d) District 4: unlimited cartons.

Dated: December 20, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–29909 Filed 12–21–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Reg. 697]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 697 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period from December 24 through December 30, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 697 (7 CFR part 910) is effective for the period from December 24 through December 30, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administraton Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 19, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 12 to 1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is moderate.

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

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.997 is added to read as follows:

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

§ 910.997 Lemon Regulation 697.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 24, 1989, through December 30, 1989, is established at 280,000 cartons.

Dated: December 20, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–29908 Filed 12–21–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 398

[Docket No. 45995; Amdt. 398-4]

RIN 2105-AB43

Essential Air Service; Reductions

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comment.

SUMMARY: This final rule prescribes criteria for making essential air service (EAS) subsidy reductions. EAS subsidies are paid to air carriers for providing scheduled air service to certain small communities. Insufficient funds have been appropriated to continue subsidies at all EAS communities that currently receive subsidy-supported air service, and the amount of subsidized service must be reduced accordingly. Pursuant to this final rule, EAS subsidy at points that are relatively close to alternate air service, or that had per-passenger subsidy requirements of $200 or more in 1988, is being eliminated. These reductions will be implemented on January 1, 1990. The criteria adopted in this final rule will also be applied in subsequent fiscal years, if future appropriations do not provide funds sufficient to maintain EAS at Fiscal Year 1990 service levels and Congress provides no statutory direction to the contrary. Public comment is invited on criteria that should be utilized if additional EAS reductions become necessary in the future.

DATE: This final rule becomes effective December 19, 1989.

Comments on criteria to use in future years should further reductions be needed should be received by February 20, 1990.

ADDRESS: Comments should be addressed to the Docket Clerk, Room 4107, Docket No. 45995, Department of Transportation, C-55, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9322. Comments received will be available for public inspection and copying at the above address from 9 a.m. to 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James R. Dann, Office of the General Counsel, Department of Transportation, Washington, DC 20590, (202) 366-9154.

SUPPLEMENTARY INFORMATION: Congress had temporarily continued EAS funding for subsidized service at FY 1989 levels in FY 1990 with the assumption that DOT, by taking "immediate regulatory action," would make effective some significant subsidy reductions on or about January 1, 1990. This final rule prescribes criteria for making reductions necessary to assure that the EAS program is operated within FY 1990 appropriation ceilings. The final rule is being made effective immediately. Prompt regulatory action is needed to provide sufficient time to implement necessary reductions within the January 1, 1990, time frame. Consistent with the alternative approaches proposed in the Department's December 1988 Notice of Proposed Rulemaking discussed below, these reductions are being achieved by adopting eligibility criteria that (1) eliminate subsidy where the subsidy-per-passenger exceeds $200, and (2) with the exception of certain State capitals, eliminate subsidy based upon the relative isolation of the community. The isolation criteria in this final rule require that an eligible community be 70 highway miles or more from the nearest medium or large hub airport, 55 highway miles or more from the nearest small hub airport, and 45 highway miles or more from the nearest nonhub airport that enplanes 100 passengers or more per day. Alaska, Hawaii, and Pacific points are excluded from subsidy reductions based upon their extreme dependence upon air service and the lack of available alternative means of transportation. Table 1 includes a listing of each subsidized EAS community, and based upon the criteria set out in the rule and DOT calculations, identifies DOT's tentative determination as to whether the community would lose or retain subsidized service for FY 1990.

The issues addressed in this rulemaking were raised by DOT's Notice of Proposed Rulemaking (NPRM) of December 14, 1988 (53 FR 50233), and the final rule combines approaches outlined in Alternatives 1, 3 and 4 of that NPRM. As explained in the NPRM, funding levels provided by the 1989 DOT Appropriations Act (Pub. L. 100-457, enacted September 30, 1988) were not sufficient to maintain EAS subsidized service at FY 1988 levels. Subsequent to publishing the NPRM, Congress enacted a supplemental appropriation that permitted DOT to avoid EAS subsidy reductions in FY 1989. However, the amounts Congress appropriated for EAS in FY 1990 cannot support service levels as high as those of FY 1988 and FY 1989, and the Conference Committee report accompanying the Department's FY 1990 appropriation bill recognized that reductions will have to be made. Comments to the NPRM docket have been analyzed and are discussed below.

The level of EAS program appropriations for future years is uncertain. DOT does not address in this final rule how any future subsidy reductions would be made, except to specify that the criteria established by this rule would remain in place should future year funding limit the EAS program to FY 1990 service levels. Comments are invited, within 60 days, on criteria that should be employed in the event that additional subsidy reductions become necessary in the future. These comments should be sent to the Docket Clerk at the address noted above.

Departmental determinations regarding EAS subsidy-supported service affecting individual carriers and points are published in DOT orders. On or shortly after the effective date of this final rule, DOT will be issuing a "Show Cause" order, tentatively terminating EAS subsidy at points determined in accordance with the reduction criteria set out in § 398.11 below. Copies of this "Show Cause" order will be mailed to civic officials of the affected communities, as well as to interested State agencies and carriers providing service to those communities, inviting all interested persons to "show cause" why the Department's tentative findings should not be finalized. Persons who wish to respond regarding the manner in which the criteria are being applied to a community or carrier should submit their views to the "Show Cause" order docket, at the address listed in the Order. Copies of the "Show Cause" order may be obtained by contacting the Docket Clerk at the address or telephone number listed above.

Description and Background of the EAS Program

In 1978, when the Airline Deregulation Act (ADA) took effect, 746 communities in the United States and its territories were listed on air carrier certificates issued under section 401, Federal Aviation Act. In light of the ADA's provisions allowing air carriers to terminate service without prior Government approval, there was concern that communities that generated low traffic levels would lose all service as carriers withdrew to larger, more lucrative markets. To address this concern, as part of the ADA the Congress added section 419 to the Federal Aviation Act, which ensured that these communities would continue to receive a link to the nation's air transportation system for ten years, with Federal subsidy if needed. DOT is now responsible for administering this subsidy program.

Under the EAS program, DOT determines the minimum level of EAS that each community requires; this

involves specifying frequency of service, total capacity, number of intermediate stops allowed, and hub destination. DOT also provides subsidy to an air carrier, if necessary, to assure that this minimum level of service is provided to the community. The Department authorizes subsidy for an airline to provide EAS only when no carrier is willing or able to provide the required level of service to the community without subsidy support. Most of the eligible communities either have continuously received service by two or more carriers since the pre-ADA period (such that EAS determinations have not been necessary) or received subsidy-free service which meets or exceeds established EAS requirements. Thus, only about 150 communities (including points in Alaska and Rota, Northern Marianas) received service in FY 1989 that was supported by EAS subsidy.

Extension of the EAS Program in Public Law 101–223

The EAS program was scheduled to terminate on October 24, 1988. However, prior to the expiration date, legislation was enacted expanding the EAS program and extending it for ten additional years. See section 202 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (December 30, 1987; Public Law 100–223).

In Public Law 100–223, Congress provided for a continuation of EAS guarantees, termed "Basic EAS". Under Basic EAS, any point was to be provided ten more years of basic service if it was (1) eligible for service under the earlier program, (2) actually receiving service during any part of Fiscal Year 1988, and (3) situated at least 45 miles from the nearest "hub" airport—which the Act defines as an airport enplaning annually at least 0.25% of all enplanements in the United States. Certain other service upgrades were also mandated, such as general employment of aircraft having at least 15 passenger seats, and use of pressurized aircraft if the flight normally flies higher than 8,000 feet above sea level. Further, there was to be no more than one intermediate stop (EAS guidelines have permitted up to two intermediate stops under the previous EAS legislation) between the EAS point and the designated hub airport (or small hub or nonhub, as appropriate).

The 1987 legislation also established two forms of service enhancement, by which communities could receive more service than Basic EAS by agreeing to a subsidy-sharing commitment or by risking loss of basic service if DOT-funded enhanced service failed to meet agreed levels of passenger usage. The 1987 legislation also provided that any other small community not entitled to Basic EAS might agree with DOT on a reasonable service level and receive service as a "new point" on a subidy-sharing basis.

Subsequent appropriation levels, however, have not provided for implementation of the provisions for the enhanced service levels, new points, or even the service upgrades required under Basic EAS, e.g., 15-seat aircraft, etc.

The Department estimated that maintenance of basic EAS alone to the communities receiving subsidized service in FY 1988 would cost $31.6 million in FY 1989. On September 30, 1988, Congress enacted the Department of Transportation and Related Agencies Appropriations Act of 1989 (Pub. L. 100–457), which appropriated only $25 million for payments to air carriers to provide subsidized EAS. Further, language in the Appropriations Act required that, "[n]otwithstanding any other provision of law," the Department make payments of EAS compensation "only to the extent and in the manner provided in appropriations Acts * * *." The legal effect of this language was to limit EAS program obligations to the appropriated amounts for FY 1989; that is, to $25 million rather than $31.6 million or some higher amount. Given that subsidy reductions were legally required, DOT prepared and issued the Notice of Proposed Rulemaking of December 14, 1988, to solicit public views on the manner in which these reductions should be accomplished.

Description of the Notice of Proposed Rulemaking

The NPRM described four different approaches toward making required EAS subsidy reductions. These approaches were:

1. Eliminate subsidy for air service to communities that are close to alternate service airports. (To achieve the required savings, this would have necessitated elimination of subsidies for service affecting 44 communities.)

2. Eliminate subsidy for air service to more than one connecting airport, and to certain communities close to alternate air service. (This would have eliminated subsidies for service affecting 46 communities.)

3. Eliminate subsidy for air service to communities with the highest annual subsidy requirements. (This would have eliminated subsidies for service affecting 33 communities.)

4. Eliminate subsidy for air service to communities that historically have enplaned the fewest passengers. (This would have eliminated subsidies for service affecting 53 communities.)

The NPRM identified the communities that would have lost subsidy-supported air service under each alternative.

In addition, the NPRM detailed the nature and background of the EAS program, and explained the requirement for program reduction. (The supplementary information provided above summarizes this material.) It also proposed that the requisite appropriation constraints would be met first by postponing implementation of those aspects of the 1987 legislation that would have increased subsidy support costs over those incurred under the expired ADA provision; i.e. higher service levels for Basic EAS, enhanced service, and service to new small communities. DOT considered that it would be difficult to justify extending subsidy for service to new points, or establishing increased service, when by doing so current EAS points would be deprived of subsidy support for air service the communities had been receiving. It also proposed not to eliminate subsidy for any Alaskan, Hawaiian, or Pacific points, where air service is often the only practical means of transportation available, and low passenger volumes ordinarily made subsidy-free service unobtainable.

The Department requested comments on the four alternative approaches toward making the necessary reductions, as well as on combinations of these alternatives or other options that might be more appropriate. It also specifically solicited views on whether Alaska, Hawaii, and Pacific points should be categorically excluded from service cuts, and on two alternative approaches that had been tentatively rejected. Those were (1) an across-the-board, percentage reduction in subsidy affecting all subsidized communities, and (2) obligation of EAS subsidy at FY 1988 service levels until FY 1989 funds were exhausted sometime during the summer of 1989. The first of these had been tentatively rejected principally because percentage cuts of approximately 39% would likely have resulted in most servicing air carriers dropping their EAS service entirely; the second, because it would be highly disruptive to all communities and because air carriers would likely thereafter be very reluctant to reinstitute service except at much higher subsidy rates.

Discussion of Comments

The Department received over 500 comments on the NPRM. Among the commenters were various States, cities and counties; United States Senators and Representatives; State Senators and

Representatives; local government officials; State and Federal government agencies; airport authorities; air carriers; trade associations; Chambers of Commerce; businesses; and individuals.

Many of the commenters focused on the adverse impacts that EAS subsidy reductions and attendant service cuts would have on individual communities. Often these commenters asserted that loss of subsidized air service would impair their communities' economic development, jeopardize existing investment, further isolate rural communities from the mainstream of the nation's commerce, or create serious impediments in traveling to and from their businesses, medical facilities, local points of interest, etc. Some commenters also contended that an attempt to save a relatively small amount in subsidy payments could impose costs of many times that amount on an affected community, or even costs on the Federal government in excess of the subsidy amount. Many commenters objected to any subsidy eliminations whatsoever that would directly affect their own community or communities, or they expressed support for the alternative or combination of alternatives that would have the least potential impact on their own community or communities. A common theme, however, found in approximately 50 of the comments and many of the comments made by members of Congress, was to recommend deferral of any Departmental action, and to seek instead either supplemental appropriations or direction from Congress on when and where reductions should be made. Of those who expressed support for a particular alternative, 61 favored alternative 3, 43 favored alternative 4, 37 favored alternative 1, and 33 favored alternative 2. A number of additional points were made, and the most salient of these are discussed below.

Alternative 1. ("Eliminate subsidy for air service to communities that are close to alternative air service.") Several commenters were in favor of this approach, noting that it seemed most consistent with recent Congressional action establishing a new eligibility standard of 45 highway miles or more from the nearest hub airport. Also supporting this approach were several commenters who sought to analogize their situations to those of Alaska, Hawaii, and Pacific points, which had been tentatively excluded from consideration for subsidy reductions in the NPRM, even though passenger volumes were low, on the basis that air service was often the only practical means of transportation available.

Opposing Alternative 1 were a number of commenters from Illinois, who contended that the measure of isolation could be misapplied in their situation. Two Illinois EAS communities are located between small airports, identified as their alternative service airports, and larger hubs that are further away. These commenters doubted that many travelers would drive in the opposite direction to the smaller point in order to utilize air service back to the large hub; they would simply drive in the first place to the larger city, and implicitly that should be the measure of their isolation. This argument is undermined by the fact that those travelers have a choice of alternate service airports that most other EAS points would not have. The nearby smaller airports offer them ready access to the national air transportation system. The fact that there is another, larger hub within reasonable driving distance affords them an additional, perhaps more convenient, option.

Another objection was that adequate public transportation was not available from the community to an alternate service airport. However, as discussed below, bus service is offered at each point at which EAS subsidy is eliminated under this final rule, to and from at least the city where the alternate service airport is located. Moreover, increased demand, generated in part by travelers using the alternate airports, may well lead to public transportation providers offering more direct services to them in the future.

Four commenters suggested that measuring the distance from the city center of an affected EAS community failed to consider the fact that the affected community's airport often served many outlaying areas, and that the highway miles from the farthest of those areas to the alternative service airport were often well in excess of the figures printed in the NPRM. Gauging mileage from a city center does operate to average out the distance from the surrounding area, but just as the distance would be more for some it would be less for others. Also, sometimes persons living some distance from an affected community would be closer to an alternate airport different from the one identified in the NPRM. Finally, the same situation would be true for virtually all communities, so valid relative comparisons can still be made.

However, one adjustment has been made from the mileage tabulations in the NPRM, in order to make the mileage calculations more representative of true conditions and fairer to the affected communities. In the NPRM, the measurements were made from the EAS community's city center to the city center of the community where the alternate service airport was located. The final rule instead measures the distance from the EAS community's city center to the alternate service airport itself, recognizing that this is the more relevant measurement for affected travelers.

A number of commenters also suggested in opposition to Alternative 1 that highway mileage figures from a potentially affected community to an alternate airport were misleading and that actual travel time should be the standard. However, analysis of the comments indicates that too many variables exist to permit an accurate, objective assessment of driving times, including personal driving habits, different routes, and day-to-day traffic and weather conditions. Moreover, few commenters suggested that driving times to the nearest alternate airport would be significantly greater than the highway miles would indicate, and even then the driving time asserted (e.g. "50 minutes to an hour and a quarter") did not seem excessive.

Finally, a few commenters contended that DOT miscalculated the relevant highway mileage. DOT has reviewed its calculations, actually drove simulated trips in some cases, and made changes where necessary. Persons still wishing to respond on this issue should do so in the "Show Cause" proceeding discussed above.

Alternative 2. ("Eliminate subsidy for air service to more than one connecting airport, and to certain communities close to alternate air service.") Several commenters noted that there was no legal entitlement for EAS subsidy to a second hub, and questions were raised as to why one point should receive service to two hubs when another would be vulnerable to losing all service. Others pointed out that subsidy could be eliminated at the second hub without depriving the community of access to the national air transportation system. The Department has as a policy matter eliminated two-hub service guarantees for a number of communities and continues to review all two-hub determinations routinely. In those cases where the Department retains two-hub guarantees for individual points, it does so in recognition of especially strong business, political, or other ties the point has traditionally had with the second hub. Two commenters contended that elimination of subsidy at various second

hubs would disrupt well-established traffic patterns and lead to significant route restructuring, one adding that this could lead to increased subsidy costs on the remaining service and also noting that the subsidy-per-passenger costs at the second hubs tend to be low.

Alternative 3. ("Eliminate subsidy for air service to communities with the highest annual subsidy requirements.") Many commenters noted in opposition to this approach that it seemed in direct conflict with what they understood as being the nature and purpose of EAS: to subsidize service to communities with the greatest "need." They asserted that the need for subsidized EAS sometimes expresses itself in relatively high subsidies. However EAS services that have disproportionately high costs relative to their benefits—viewed in terms of per-passenger subsidy costs — simply lack justification for continuation when appropriations are reduced and bus or rail alternatives are available.

Several commenters from Northern states asserted that operating costs tend to be higher in the North, due to the need for hanger rentals, more weather delays, etc. However, geographic location does not appear to be a decisive factor. Subsidy to only five communities is being eliminated solely on the basis of a per passenger subsidy exceeding $200 (not including those eliminated under Public Law 101–45). Of these five, two are in Nebraska, one in Oklahoma, one in Arizona, and one in California, and the two closest to the $200 limitation point where those in Arizona and California.

One commenter argued that subsidy rate figures for individual communities do not accurately reflect the true cost of maintaining subsidized service at a community served as part of a linear route. Subsidy rates do, however, reflect actual expenditures and, when divided by passenger enplanements, do provide a reasonably accurate measure of relative cost efficiencies at each point.

Alternative 4. ("Eliminate subsidy for air service to communities that historically have enplaned the fewest passengers.") In commenting in support of this alternative, some echoed a view referenced above in the Alternative 3 discussion, that communities affected by reductions under Alternative 4 frequently met the true definition of what is "essential" service, being very isolated and without reasonable access otherwise to the air transportation system. (At the same time, however, communities requiring high subsidy costs relative to the passengers enplaned are relatively cost-inefficient, and lack justification for subsidy retention in times of appropriation constraints where bus or rail transportation is available.)

Several commenters noted that sometimes, due to routing patterns, available seats were limited at their sites and so their enplanement figures did not adequately reflect passenger demand. However, it is our experience that fully booked subsidized EAS flights are much more the exception than the rule. Subsidy was required at the point because traffic is below the threshold required for self-supporting air service, and generally carriers can profitably serve a community without subsidy when passengers occupy about 50% of the available seats.

Some commenters expressed the view that temporary conditions, e.g. droughts, industry downturns, etc. created artifically low enplanement figures at various communities. Some also contended that their ridership figures should be soon increasing due to new industries locating in the area, or that ridership trends were moving upwards. Also, several commenters noted that EAS or the present EAS carrier was new to the locality, and expressed confidence that enplanement figures would likely rise as service was publicized and became better established. Others contended that ridership figures would be higher if better equipment were utilized or the schedules were better. However, FY 1988 ridership statistics at the communities vulnerable to loss of subsidy due to high subsidy-per-passenger figures do not seem disproportionately out of line with statistics for prior years. Also, claims to probable higher enplanement figures in the future, or artificially low current figures, were in general too vague and speculative to serve as a basis for retaining subsidy at these points at the expense of other communities with more concrete claims to need and cost-effectiveness. In addition, if ridership figures were significantly increased, the need for subsidy would be less than certain.

Additional Comments. Many commenters suggested that cuts based on a single criterion and using generalized data would tend to produce arbitrary results. Some Suggested combining the alternatives in some fashion, as by reducing first the subsidies for communities vulnerable under more than one of the reduction criteria.

Others suggested new criteria to be employed in making the requisite reductions. Most prominent of the "new criteria" suggestions was cost-effectiveness: A number of commenters noted that some communities had exceptionally high subsidy-per-passenger costs or that a combination of Alternatives 3 and 4 could be employed to highlight those communities further from self-sufficiency. In contrast, three commenters maintained that cuts could be made where the subsidy-per-passenger figures were smallest, since these were closest to self-sufficiency or would involve only a modest fare adjustment that would constitute fair compensation for the convenience of air service to the community. Thirteen communities receive per-passenger subsidies of less than $15, but these tend to serve relatively large numbers of people, be relatively cost-effective, and be relatively close to self-sufficiency. Prospects for self-sufficiency could be substantially reduced if DOT eliminated subsidy at this time. Accordingly, low subsidy-per-passenger rates are not utilized at this time as a criterion for subsidy elimination. However, comments are requested concerning whether subsidy to these communities should be eliminated if appropriation levels require further reductions.

Some commenters preferred a purely case-by-case approach, with DOT using various criteria as merely considerations rather than qualifying factors. However, with 150 communities receiving EAS subsidy, this would be extremely cumbersome administratively, and relatively objective criteria can be established for categorical determinations. Others suggested that pro rata cuts should be made, observing that this approach would force each community to come to grips with its situation and come up with ways of offering concessions or replacement subsidies to the carriers if it desired to maintain service. However, no commenter disputed DOT's expressed concern that such an approach would likely have resulted in most servicing air carriers dropping their service entirely during the year (since carriers would not be fully compensated by subsidy for their costs). Also, few States or local governments were in a position to pledge substitute funding. A pro rata cut approach would have most probably produced substantial disruptions at most points, even if subsequent restarts could be achieved.

Several commenters objected to the exclusion of Alaska, Hawaii, and Pacific points from any subsidy reductions, although Alaska and several of the Pacific points, in relatively compelling fashion, reiterated their dependence on air transportation for delivery of mail, foodstuffs, and other basic necessities. Several others argued that DOD could achieve sufficient savings through

management improvements to eliminate or substantially reduce the need for subsidy reductions. While management improvements have been made or are being introduced, the savings from them do not project out to allow full FY 1989 service levels to be maintained.

A few commenters suggested that some appeals procedure should be established to assure that deserving communities may have their particular cases considered. The NPRM comment process was intended to provide an opportunity for input from the individual communities and other interested parties, however, and no FY 1990 subsidy eliminations have been recommended without careful consideration of the impacts of such cuts on the individual community. Also, all responses to the "Show Cause" order will be carefully considered.

Miscellaneous suggestions were also offered by some commenters. A few commenters suggested that a community should be retained in the program if it was making progress in increasing enplanements or reducing its subsidy need. While this does offer one way of measuring the success of EAS at a community, different factors influence enplanement figures or subsidy payments, especially over shorter terms, and it would be difficult to fashion objective, fair criteria for EAS reductions using such an approach. Another commenter suggested that DOT measure isolation for a "major" hub only, but this overlooks the fact that reasonable access is obtainable to the nation's air transportation system at smaller hubs and even most nonhubs. One commenter suggested that part of the subsidy should be paid directly to the community, and another recommended that DOT lower existing service levels, as by subsidizing air taxis rather than scheduled service. However, both of these approaches would require statutory changes.

Finally, several communities that do not presently have subsidized service objected to the NPRM's proposed exclusion of service to "new points" addressed in the 1987 legislation. However, DOT maintains that it is difficult to justify extending service to a "new point," when that would require discontinuing subsidy at another.

Developments Following Publication of the NPRM; Enactment of Public Law 101–45

As noted above, the Department received many comments urging that any action on subsidy reductions be deferred until Congress had the opportunity to consider supplemental appropriations, and perhaps to provide guidance on when and where service cuts might be made. The Secretary of Transportation agreed to defer action to provide Congress this opportunity.

On June 29, 1989, Congress passed Public Law 101–45, the Dire Emergency Supplemental Appropriations Act of 1989. Among its provisions was a $6.6 million supplemental appropriation for the EAS program, permitting the program to be maintained at FY 1988 levels through the remainder of FY 1989. However, this statute also provided that, after September 30, 1989, "no subsidy shall be paid for any service to or from any essential air service point in the contiguous United States for which the per passenger subsidy exceeds $300." DOT identified six such points and issued Order 89–9–37 on September 22, 1989, eliminating the guarantee of service at these points and terminating the subsidy rates for the carriers serving these communities as of October 1, 1989. The six points are: Beloit/Janesville, Wisconsin; Independence/Parson/Coffeyville, Kansas; Hutchinson, Kansas; Lewiston/Auburn, Maine; Moultrie/Thomasville, Georgia; and Kokomo/Logansport/Peru, Indiana. In addition, the accompanying Conference Report sought the views of the Secretary of Transportation as to whether other means of evaluating services would be more appropriate.

EAS Report to Congress

Consistent with the Conference Report, the Department submitted a *Report to Congress on Subsidized Air Service Under the Essential Air Service Program—Ways to Reduce Annual Subsidy Expenditures.* In this Report, a copy of which has been placed in the docket, the Department stated its view that program costs for some communities exceed benefits and, accordingly, additional new eligibility standards should be imposed. With the NPRM and the docket comments as background, the Department explored a number of criteria and combinations of criteria that could be used to eliminate communities' subsidy eligibility. After thorough analysis, the Department indicated its view that communities' isolation relative to other air service is the single most meaningful measure of their need for air service. The Report recommended that this measure should be utilized as the primary evaluation tool because it is consistent with the overall purpose of EAS—to permit communities that received scheduled air service at the time of deregulation to have access to the national air transportation system. By applying this measure, communities would retain reasonable, if unfortunately less convenient, access to that system through another airport. Also, this measure can be fairly applied and easily understood. The Department also recommended that as a secondary measure, a subsidy-per-passenger cap of $200 be imposed, as this would serve to exclude the least cost-effective services.

The Department also proposed that the isolation and subsidy-per-passenger eligibility standards be applied to EAS communities that currently receive subsidy-free service but that might become subsidy-dependent in the future. Finally, the Department recommended reviewing communities' continued eligibility annually based on updated subsidy, traffic and isolation data.

The Report's recommendation regarding the isolation criteria to be employed was similar to that in Alternative #1 of the NPRM. The Department offered, by example, isolation criteria that would eliminate subsidy for points that were fewer than 75 miles from a large or medium hub, or fewer than 55 miles from a small hub, or fewer than 45 miles from a qualifying nonhub. The Report also recommended that nonhubs be considered as alternate service airports only if they met a "usability" threshold. A nonhub might have only two or three flights a day or, as in the case of Green Bay, for example, more than 30 flights per day to several destinations. While people may be willing to drive 40 miles to Green Bay to enter the air transportation system, they would be far less likely to drive 40 miles to a community with only a few commuter flights a day to one destination.

The Department therefore recommended in its Report that a threshold level of service should be required at an alternate nonhub airport before it can be considered a usable alternative. The Report suggested that nonhubs must enplane an average of 100 passengers per day or 36,500 per year to be considered a usable alternate for the EAS point. With the 15- to 19-seat commuter aircraft that typically serve EAS points and other small nonhubs, normally at least eight or nine departures per day would operate to accommodate 100 passengers. Also, 100 daily enplanements are enough to support service with jet aircraft; and if larger than 15- to 19-seat aircraft are used at the nonhub, its attractiveness as an alternate to the EAS point might be enhanced. In determining whether a nonhub airport would meet the 100 enplanement-per-day threshold, enplanements generated by both certificated and commuter air carriers would be included.

If these criteria were fully implemented, the Report indicated that 24 communities would be eliminated from subsidy support, producing an annual subsidy saving of about $5.5 million. These service and subsidy cuts would be over and above those for the six points that Congress had already eliminated effective October 1, 1989, which will save $1.7 million a year.

Department of Transportation Appropriations Act, FY 1990

The FY 1990 DOT Appropriations Act (Pub. L. 101–164, November 21, 1989), provides $30,735,000 for EAS payments. This figure is less than the Department's estimate for extending basic EAS in FY 1990 at FY 1989 service levels (except at the six points eliminated under Public Law 101–45) of $34.5 million. The legislation also retains the FY 1989 Act language limiting the payment of EAS compensation to the amounts appropriated for it.

In reporting on the legislation, the Appropriations Conference Committee recognized that the amount being appropriated would not support the same level of service provided in FY 1989. The Committee accepted an appropriation figure of $30,735,000, an amount sufficient to implement a reduced program generally along the lines outlined in the Department's report.

Relative Hardships on the Communities Affected

The Department had considered, within its Report to Congress, the relative hardships that would be imposed on the communities affected by its reduction recommendations. All of the communities identified for subsidy elimination receive intercity bus service, and nine receive intercity passenger and freight rail service. Eleven of the communities that received service in FY 1988, and that are proposed for subsidy elimination under this rule, averaged fewer than five enplanements per day. (Brownsville, Texas, and Battle Creek, Michigan, did not receive service in FY 1988.) At three of these communities we would expect that the carriers would continue to provide service even after their subsidy is eliminated because of high traffic levels. New Bedford, Massachusetts, already receives subsidy-free service to Nantucket and Martha's Vineyard, its major markets. Rocky Mount and Winston-Salem, North Carolina, each averages more than 50 enplanements per day, and the carrier would likely continue service without subsidy support. In addition, all these communities are within reasonable ground transportation time of usable alternate air service and/or generate very little traffic. At the five communities that would fall out based on the $200-per-passenger cap without regard to isolation, average daily enplanements are as follows:

Columbus, Nebraska	1.4
Sidney, Nebraska	1.6
Winslow, Arizona	1.8
Blythe, California	2.7
McAlester, Oklahoma	1.6

In summary, it is evident that none of these communities would suffer undue hardship by being eliminated from the program.

Summary of Final Rule

To achieve the subsidy reductions required for FY 1990, this final rule incorporate a combination of the approaches proposed in Alternatives 1, 3 and 4 of the NPRM. The rule is also consistent with the approach contemplated by the Conference Committee Report. In considering both the relative isolation of a community (Alternative 1) and its subsidy-per-passenger (Alternatives 3 and 4), this approach effectively balances the need for air service with the cost of maintaining that service, in such a way as to minimize, to the extent practicable, the adverse impacts inherent in any subsidy reduction approach. (See the discussion above, and the Statement of Regulatory Impacts for further discussion of impacts associated with this rule.) Additionally, this approach will permit the Department to operate its FY 1990 EAS program within the appropriated amounts, which is its legal obligation.

This rule therefore provides for eligibility criteria requiring that a qualifying community not have required a subsidy-per-passenger rate of more than $200.00, and that it be 70 highway miles or more from the nearest medium or large hub airport, 55 highway miles or more from the nearest small hub airport, and 45 highway miles or more from the nearest nonhub airport that enplanes 100 passengers or more per day. An exception to these criteria is made for State capitals located more than 55 highway miles from the nearest medium or large hub airport, 40 miles from the nearest small hub airport, and 30 miles from the nearest qualifying nonhub airport and whose per-passenger subsidy, as of September 30, 1989, did not exceed $15. Also excluded are Alaska, Hawaii, and Pacific points, based upon their extreme dependence upon air service and the lack of available alternative means of transportation. The qualifying criteria established in the rule would remain in effect after FY 1990, if subsequent appropriations limit the program to the same service levels as in FY 1990 (or require lower ones), and Congress provides no statutory director to the contrary. Finally, the rule specifies that, under FY 1990 fiscal constraints, subsidy will not be available for the enhanced service levels, new points, or Basic EAS service upgrades—except for a 2 engine/2 pilot provisions having negligible subsidy cost impacts—authorized under Public Law 100–223.

Statement of Regulatory Impacts

This rulemaking has been evaluated under various regulatory laws and policies as discussed below.

Evaluation of Costs, Benefits, and Impacts—The immediate benefits expected to accrue from this rulemaking relate to an anticipated savings of approximately $3.8 million in FY 1990. Should Congress opt to retain EAS at FY 1990 service levels for FY 1991, FY 1992, etc., savings of approximately $5 million per year can be expected. (Savings for those years would be realized for the full twelve months of the year rather than the nine months' savings being achieved under this rule.) This savings represents the dollar amount of the reductions in EAS subsidies that are being implemented by this rulemaking. From an overall perspective, this savings represents an important effort being made toward reducing the country's budget deficit. Similar efforts are being made to achieve savings through reduced appropriations in other Federal progrms.

The cost of the EAS program at each community is reflected in the data set out in Table 1 of this rule. Individual benefits arising from this rule relate to the retention of EAS subsidy at communities that are in greatest need of access to the national air transportation system (as measured by their distance from alternate service airports), but that do not also require substantial subsidy per passenger in order to maintain service. Through this balance of relative need with relative cost-efficiency, the impacts of EAS reductions can be minimized as much as practicable.

Comments to the NPRM did not provide sufficient data that could be employed as the basis for fully quantifying the benefits associated with this rulemaking. Partial quantification of benefits and impacts has been illustrated in Table 1 below, and in a qualitative way they can be summarized as follows: (1) The communities losing service are being limited to those that

have low cost-efficiencies, or have reasonable access to nearby air service, resulting in the least overall inconvenience to the traveling public, as compared to greater inconvenience that would have been encountered under the other alternatives considered in this rulemaking; (2) Nearly two-thirds of the communities that are losing subsidized air service enplane fewer than 10 passengers per day; (3) Relatively few communities are projected to lose subsidized air service (20 plus the 6 points previously excluded) when compared to the number of communities losing service under other alternatives considered in this rulemaking for reduction under FY 1989 appropriation restraints (44, 46, 33, and 53); and (4) Subsidy for air service is being eliminated at many communities that are among those having the least chance of attracting self-sufficient air service, in view of the relatively large amounts of subsidy that they require and/or in view of the historically low level of traffic that they have generated. Tangential benefits in this rulemaking include those relating to expansion of alternative transportation business concerns, such as limousine services, air taxi operators, and public transportation providers, which could expand or develop as a result of new passengers seeking alternative travel arrangements.

The anticipated impacts to individual communites in this rulemaking are listed in Table 1. The far right column indicates whether, basd upon DOT calculations, the particular community meets the reduction criteria specified in this rule.

The costs associated with this rule relate mostly to the additional time or expense, or both, involved in traveling to and from an alternate service airport, or by an alternative transportation mode. Business costs in affected areas will likely increase, proportionately to the amount of existing business travel expenses due to mileage costs and delays incurred by having to use and rely on alternative service airports. A means to measure the extent of delays and additional travel expenses that will result is reflected in the column in Table 1 entitled "Miles between EAS community and alternate service airport." DOT received numerous comments from business concerns and individuals who stated that they would be inconvenienced, and suffer increased costs, if EAS subsidy were not retained at their communites. Some of these comments were from communities at which subsidy would be eliminated under this rule. However, these comments tended to be rather general in character. Moreover, as noted above, these commenters did not provide us with a methodology or data that could be generally applied to quantify individual costs, benefits, and impacts to any degree greater than that done for this evaluation.

The NPRM suggested that air carriers could also be affected due to loss of EAS routes, leading in turn to loss of revenues and jobs. EAS air carriers that offered comments did not tend to raise this specific concern, and none offered a methodology or sufficient data to use in quantifying any such impacts. Additional discussion on air carrier impacts is found in the next section.

The NPRM noted that discontinuation of EAS subsidy need not result in discontinuation of air service, as State or local governments might be able to offer sufficient funds to maintain service, air fares might be increased, or carriers might agree to maintain service to affected communities at present or reduced levels. However, most carriers indicated that, without subsidy, they would be unable or unwilling to continue service to an EAS point for which they currently receive subsidy. Nor were comments from the States and local governments encouraging on this point. Carriers are urged to work with individual communities affected by this rule in the hope that acceptable alternative arrangements might be developed.

In summary, DOT has concluded that the benefits to be achieved in this rulemaking (i.e., the cost savings to our national economy together with the continuation of subsidy support at the communities that are in need of access to the national air transportation system, but that do not require substantial support in terms of subsidy per passenger) clearly outweigh the resulting costs associated with loss of subsidy by the relatively few number of communities affected by the final rule.

Regulatory Flexibility Act

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

There are three types of small entities affected by this rulemaking: Small air carriers, small businesses, and small local governments. Air carriers are businesses, which, to come under the Regulatory Flexibility Act as small business concerns, must be independently owned and operated and not dominant in their field of operation. Given the significant degree of integration of large and small air carriers in the current deregulated environment, there remain few carriers performing the type of regional feeder service that are subsidized under the EAS program and that are truly independent. Through joint marketing and ticketing arrangements and purchases of equity interests, large airlines have substantial amounts of influence over the operations of regional carriers affected by this program. Hence, it is not possible to say that there subsidy reductions will have a significant economic impact upon a substantial number of these small business concerns.

In any event, the impact on most small carriers should not be significant. Of the EAS carriers serving points affected by the reduction criteria contained in this rule, most provide subsidized or nonsubsidized service, or both, in various other markets. Given that these carriers may redeploy their aircraft, or make other financial and operational adjustments, the Department expects that they will continue to remain viable despite the loss of EAS revenues. In fact, some or all of these carriers may be able to make adjustments producing a more efficient overall operation. Another small group of carriers, listed earlier as serving or as being selected for affected EAS points, either failed to initiate or discontinued service during the past year for financial or operational reasons and have not been replaced. Subsidy reductions at this should have little, if any, effect on these carriers. One EAS carrier provides scheduled service at only one point, and subsidy for this service would be discontinued under the criteria of this rule. This carrier, however, had previously filed a notice to terminate service at the point, and its parent maintains an air freight business that will not be affected. DOT expects that loss of EAS subsidy would not have a substantial impact on this firm. Finally, one carrier was impacted by the termination of subsidy at one point by Public Law 101–45, and thereafter discontinued operations; this carrier had applied to serve two points at which subsidy support would be terminated under the criteria contained in this rule. Given its prior shutdown, it is not considered that the termination of EAS revenues at this time would have any measurable impact on this carrier.

The impact on small businesses in communities for which EAS subsidy is being withdrawn should likewise not be significant, as alternative modes of passenger and freight transportation are available. In addition, this rulemaking should not result in termination of all access for small business to scheduled air transportation—it merely increases the surface travel time and distance to

connect with alternate air transporation. Also, the impacts resulting from the rule are anticipated to affect large and small businesses similarly, and create no inherent advantages for either. Finally, this rulemaking should not substantially affect small air charters and air taxis. To the extent that these businesses are affected, the effect should be beneficial and result in increased demand for these types of air service.

A very few small businesses, such as those located at airports serviced by subsidized carriers and engaged in aircraft servicing, may be more directly impacted by this rule. We received no comments from such businesses indicating that they would be unable to continue in business or have their revenues dramatically affected as a result of the issuance of this rule.

Local governments will also be affected by this rulemaking, in that some communities that they serve are being declared no longer eligible for subidized service. This arguably affect local revenues, tax bases, business activity levels, and general community welfare. However, any generalized economic impact is not likely to be significant, largely for the reasons given above regarding small businesses. Also, at most affected points, ridership figures are low, indicating that any generalized economic impact is quite small.

Executive Order 12291, "Federal Regulation"

The rulemaking is not major, in that it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612, "Federalism"

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The legislation sets forth the rules for the Federal, State, and local government in carrying out the legislation, and this rulmaking merely reflects those roles.

DOT Regulatory Policies

This rulemaking is considered to be significant under Department of Transportation "Regulatory Policies and Procedures" (44 FR 11034; February 28, 1979); in particular, substantial governmental and public interests are involved. This rulemaking therefore includes a final evaluation of the relevant costs, benefits, and impacts, and related issues, which is required by DOT Regulatory Policies and Procedures. As explained in the evaluation, the principal benefits anticipated in this rulemaking are expected to outweigh the costs to individual communities and air carriers that will be affected by the final rule. Further, every effort is being made to minimize the economic impact that this rulemaking will have.

Legal Authority

This rulemaking is issued under the authority of sections 204 and 419 of Public Law 85–726 as amended (49 U.S.C. 1324 and 1387); and Public Law 101–164 (Department of Transportation and Related Agencies Appropriations Act, 1990, November 21, 1989.)

List of Subjects in 14 CFR Part 398

Air transportation, Essential air service.

In accordance with the foregoing, part 398 of title 14, Code of Federal Regulations is amended as follows:

1. The authority citation for part 398 is revised to read as follows:

Authority: Secs. 204 and 419 of Pub. L. 85–726 as amended (49 U.S.C. §§ 1324 and 1387); and Pub. L. 101–164 (Department of Transportation and Related Agencies Appropriations Act, 1990, November 21, 1989).

2. A new § 398.11 is added to read as follows:

§ 398.11 Funding reductions: fiscal year 1990 and subsequent fiscal years.

(a) Because the funds appropriated for FY 1990 are less than the amount required for operations of subsidy-supported essential air service (EAS) as authorized in orders in effect on July 1, 1989, FY 1990 appropriations shall not be available for—

(1) Enhanced EAS, Compensation for Service to Other Small Communities, and Basic EAS service upgrades, as authorized under sections 419 (c), (d), and (k)(1) (C), (D), and (F) of the Federal Aviation Act of 1958, as amended; and

(2) After December 31, 1989, for EAS to otherwise eligible points within the 48 contiguous States and Puerto Rico that, except for State capitals qualifying under paragraph (b), have a rate of subsidy per passenger in excess of $200.00, or are located—

(i) Fewer than 70 highway miles from the nearest large or medium hub airport; or

(ii) Fewer than 55 highway miles from the nearest small hub airport; or

(iii) Fewer than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day, in the most recent calendar year for which the Department has obtained complete data.

(b) Subsidy shall be available in FY 1990 for EAS to otherwise-eligible points that are State capitals, had a rate of subsidy-per-passenger that as calculated by the Department based on the most recent available data did not exceed $15.00 on September 30, 1989, and are located more than—

(1) 55 highway miles from the nearest medium or large hub airport;

(2) 40 highway miles from the nearest small hub airport, and

(3) 30 miles from the nearest nonhub airport that has enplaned 100 or more passengers per day based on the most recently available data.

(c) If, in future fiscal years, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported EAS at the points receiving such service in fiscal year 1990, and Congress provides no statutory direction to the contrary, the criteria established by this section shall remain in effect.

(d) For purposes of paragraph (a)(2), the rate of subsidy per passenger for FY 1990, except as otherwise noted in Table 1, is calculated by dividing the annual subsidy in effect on June 30, 1989 by the total origin and destination traffic during FY 1988. For fiscal years beginning after September 30, 1990, the rate of subsidy per passenger shall be calculated by dividing the annual subisdy in effect as of July 1 of the prior fiscal year by the total origin and destination traffic during the prior calendar year.

(e) For purposes of paragraph (a)(2),

(1) "Large hub airport" means an airport that annually enplanes 1.0% or more of the total annual enplanements reported by certificated carriers in the United States;

(2) "Medium hub airport" means an airport that enplanes between 0.25% and 0.999% of such total enplanements;

(3) "Small hub airport" means an airport that enplanes between 0.05% and 0.249% of such total enplanements; and

(4) "Nonhub airport" means an airport that enplanes less than 0.05% of such total enplanements.

TABLE 1

EAS Community [1]	Nearest airport providing unsubsidized alternate service if EAS subsidy is eliminated [2]	Hub Classification of alternate service airport	Miles between EAS community and alternate service airport [3]	Total Origin and Destination Traffic, (FY 1988)	Subsidy Rates in Effect at EAS point (6/30/89)	Subsidy per passenger	Would EAS subsidy be eliminated under this rule?
ALABAMA:							
Anniston [4]	Birmingham, AL	S	62	16,585	([5])	([5])	N
Gadsden	Birmingham, AL	S	60	1,659	$183,137	$110.39	N
ARIZONA:							
Kingman [6]	Las Vegas, NV	L	103	[7] 5,155	263,591	51.13	N
Page	Flagstaff, AZ	N	137	8,575	177,433	20.69	N
Winslow [6]	Flagstaff, AZ	N	61	[7] 1,114	237,047	212.79	Y
ARKANSAS:							
El Dorado/Camden	Texarkana, TX	N	84	[8] 6,861	717,766	194.62	N
Harrison	Springfield, MO	N	88	[8] 3,388	544,432	160.69	N
Hot Springs	Little Rock, AR	S	57	[8] 2,609	507,407	194.48	N
Jonesboro	Memphis, TN	L	71	[8] 1,476	260,273	176.34	N
CALIFORNIA:							
Blythe	Yuma, AZ	N	92	1,677	354,336	211.29	Y
Crescent City	Eureka, CA	N	80	4,202	154,660	36.81	N
Merced	Fresno, CA	S	60	18,197	310,521	17.06	N
COLORADO:							
Alamosa	Pueblo, CO	N	127	17,322	([5])	([5])	N
Cortez	Durango, CO	N	57	9,545	138,210	14.48	N
Lamar	Pueblo, CO	N	114	2,435	244,317	100.34	N
GEORGIA:							
Athens [9]	Atlanta, GA	L	82	30,346	([5])	([5])	N
Moultie/Thomasville	Tallahassee, FL	S	56	1,372	462,756	337.29	[10] N
ILLINOIS:							
Mt. Vernon [6]	St. Louis, MO	L	93	3,515	307,772	87.56	N
Sterling/Rock Falls	Moline, IL	S	60	1,744	248,011	142.21	N
INDIANA:							
Elkhart	South Bend, IN	S	19	7,769	249,591	32.13	Y
Kokomo	Indianapolis, IN	M	77	1,255	401,175	391.66	[10] N
Terre Haute [11]	Indianapolis, IN	M	N/A	N/A	N/A	N/A	N/A
IOWA:							
Clinton	Moline, IL	S	45	721	203,708	282.54	Y
Ottumwa	Des Moines, IA	S	92	1,576	238,498	151.33	N
KANSAS:							
Dodge City	Wichita, KS	S	156	5,242	244,317	46.61	N
Garden City	Wichita, KS	S	209	9,282	244,317	26.32	N
Goodland	Denver, CO	L	190	1,724	244,317	141.72	N
Great Bend	Wichita, KS	S	116	2,930	244,317	83.38	N
Hays	Wichita, KS	S	175	8,561	244,317	28.54	N
Hutchinson	Wichita, KS	S	53	543	244,317	449.94	[10] N
Parsons/Ind/Coffeyville	Joplin, MO	N	68	418	244,317	584.49	[10] N
Liberal/Guymon	Amarillo, TX	S	162	5,766	244,317	42.37	N
KENTUCKY:							
Owensboro [11]	Evansville, IN	N	N/A	N/A	N/A	N/A	N/A
MAINE:							
Lewiston	Portland, ME	S	39	[12] 816	269,755	330.58	[10] N
Bar Harbor [4]	Bangor, ME	N	52	16,840	([5])	([5])	N
MASSAHUSETTS:							
New Bedford [13]	Providence, RI	S	41	[14] 595	([5])	([5])	Y
MICHIGAN:							
Alpena [15]	Traverse City, MI	N	N/A	N/A	N/A	N/A	N/A
Battle Creek	Kalamazoo, MI	N	20	[16] 13,000	159,080	12.24	Y
Benton Harbor	South Bend, IN	S	35	6,182	249,591	40.37	Y
Iron Mountain	Milwaukee, WI	M	200	8,799	182,799	20.77	N
Ironwood/Ashland	Duluth/Superior, MN	N	103	4,514	182,799	40.50	N
Manistee/Ludington	Grand Rapids, MI	S	120	[17] 4,455	268,414	60.25	N
Menominee/Marinette	Green Bay, WI	N	60	[18] 3,889	403,409	103.73	N
Jackson	Lansing, MI	N	42	773	159,080	205.80	Y
Sault Ste Marie [15]	Traverse City, MI	N	N/A	N/A	N/A	N/A	N/A
MINNESOTA:							
Fairmont	Minneapolis/St. Paul, MN	L	153	2,812	303,427	107.90	N
Mankato	Minneapolis/St. Paul, MN	L	75	2,510	179,600	71.55	N
Worthington	Sioux Falls, SD	S	62	1,778	179,600	101.01	N
MISSISSIPPI:							
Laurel-Hattiesburg [4]	Jackson, MS	S	95	[19] 7,396	([5])	([5])	N
MISSOURI:							
Fort Leonard Wood	Springfield, MO	N	92	9,356	168,983	18.06	N
Kirksville	Kansas City, MO	L	145	6,281	235,637	37.52	N
MONTANA:							
Glasgow	Billings, MT	S	247	3,011	168,229	55.87	N
Glendive	Bismarck, ND	N	192	1,764	131,515	74.55	N
Havre	Great Falls, MT	N	113	1,797	190,495	106.01	N
Lewistown	Great Falls, MT	N	108	984	190,495	193.59	N
Miles City	Billings, MT	S	146	2,295	131,515	57.31	N

TABLE 1—Continued

EAS Community [1]	Nearest airport providing unsubsidized alternate service if EAS subsidy is eliminated [2]	Hub Classification of alternate service airport	Miles between EAS community and alternate service airport [3]	Total Origin and Destination Traffic, (FY 1988)	Subsidy Rates in Effect at EAS point (6/30/89)	Subsidy per passenger	Would EAS subsidy be eliminated under this rule?
Sidney	Minot, ND	N	183	4,720	315,815	66.91	N
West Yellowstone [15]	Bozeman, MT	N	N/A	N/A	N/A	N/A	N/A
Wolf Point	Minot, ND	N	222	2,737	168,229	61.46	N
NEBRASKA:							
Alliance	Denver, CO	L	242	1,444	222,727	154.24	N
Chadron	Rapid City, SD	N	104	1,154	222,727	193.00	N
Columbus	Lincoln, NE	S	77	862	218,079	252.99	Y
Grand Island	Lincoln, NE	S	98	[20] 5,313	457,977	86.20	N
Hastings	Lincoln, NE	S	104	1,821	222,727	122.31	N
Kearney	Lincoln, NE	S	130	5,429	222,727	41.03	N
McCook	Denver, CO	L	259	2,416	222,727	92.19	N
Norfolk	Omaha, NE	S	111	2,562	218,079	85.12	N
North Platte	Omaha, NE	S	282	[21] 3,943	274,222	69.55	N
Scottsbluff	Denver, CO	L	202	[21] 6,076	274,222	45.13	N
Sidney	Denver, CO	L	166	1,029	222,727	216.45	Y
NEVADA:							
Ely	Salt Lake City, UT	L	236	4,430	359,194	81.08	N
NEW HAMPSHIRE:							
Keene [6]	Manchester, NH	N	62	16,458	([5])	([5])	N
Laconia	Manchester, NH	N	52	2,758	249,786	90.57	N
NEW JERSEY:							
Cape May [6]	Atlantic City, NJ	N	45	5,585	([5])	([5])	N
NEW MEXICO:							
Alamogordo	El Paso, TX	M	92	6,144	165,766	26.98	N
Clovis	Lubbock, TX	S	106	6,195	133,651	21.57	N
Gallup [11]	Farmington, NM	N	N/A	N/A	N/A	N/A	N/A
Hobbs	Midland/Odessa, TX	S	98	6,234	85,690	13.75	N
Sante Fe	Albuquerque, NM	M	59	[22] 11,262	132,314	11.75	N
Silver City	El Paso, TX	M	163	4,504	169,390	37.61	N
NEW YORK:							
Massena	Burlington, VT	S	149	8,671	166,289	19.18	N
Ogdensburg	Syracuse, NY	M	127	9,490	166,289	17.52	N
Plattsburgh	Burlington, VT	S	77	25,250	166,289	6.59	N
Saranac Lake/Lake Placid	Burlington, VT	S	101	18,731	166,289	8.88	N
Watertown	Syracuse, NY	M	70	[23] 15,883	166,289	10.47	N
NORTH CAROLINA:							
Rocky Mount/Wilson	Greenville, NC	N	34	32,618	180,492	5.53	Y
Winston-Salem	Greensboro, NC	S	15	33,904	([5])	([5])	Y
NORTH DAKOTA:							
Devils Lake	Grand Forks, ND	N	90	4,134	294,396	71.21	N
Jamestown	Fargo, ND	S	97	7,744	294,396	38.02	N
Williston	Minot, ND	N	130	10,421	315,815	30.31	N
OHIO:							
Mansfield	Columbus, OH	M	63	[24] 2,967	383,527	129.26	Y
OKLAHOMA:							
Enid	Oklahoma City, OK	M	91	[8] 1,534	178,235	116.19	N
McAlester	Tulsa, OK	M	102	[8] 998	228,799	229.26	Y
Ponca City	Wichita, KS	S	88	[8] 3,058	178,235	58.28	N
OREGON:							
Salem	Portland, OR	M	62	3,258	113,705	34.90	Y
PENNSYLVANIA:							
Oil City/Franklin	Youngstown, OH	N	72	21,444	128,504	5.99	N
PUERTO RICO:							
Ponce	San Juan, PR	M	80	9,125	265,058	29.05	N
SOUTH DAKOTA:							
Brookings	Sioux Falls, SD	S	57	4,167	108,938	26.14	N
Huron	Sioux Falls, SD	S	121	6,216	108,938	17.53	N
Mitchell	Sioux Falls, SD	S	68	1,852	108,938	58.82	N
Pierre	Sioux Falls, SD	S	207	[25] 9,425	371,165	39.38	N
Yankton	Sioux Falls, SD	S	96	1,198	218,079	182.04	N
TENNESSEE:							
Clarksville [6]	Nashville, TN	M	66	[26] 1,286	307,772	239.33	Y
TEXAS:							
Brownsville [6]	Harlingen, TX	S	31	([5])	([5])	([5])	Y
Brownwood	Abilene, TX	N	77	[8] 3,772	285,898	75.79	N
Paris	Texarkana, TX	N	95	[8] 1,595	228,799	143.45	N
Temple	Killeen, TX	N	16	[8] 9,089	357,307	39.31	Y
UTAH:							
Cedar City	Las Vegas, NV	L	171	10,435	167,489	16.05	N
Moab	Grand Jct., CO	N	116	1,871	172,930	92.43	N
Vernal	Salt Lake City, UT	L	171	3,934	203,784	51.80	N
VERMONT:							
Montpelier/Barre	Burlington, VT	S	40	1,363	235,371	172.69	Y
Rutland [6]	Burlington, VT	S	71	15,524	([5])	([5])	N

TABLE 1—Continued

EAS Community [1]	Nearest airport providing unsubsidized alternate service if EAS subsidy is eliminated [2]	Hub Classification of alternate service airport	Miles between EAS community and alternate service airport [3]	Total Origin and Destination Traffic, (FY 1988)	Subsidy Rates in Effect at EAS point (6/30/89)	Subsidy per passenger	Would EAS subsidy be eliminated under this rule?
VIRGINIA:							
Danville	Greensboro, NC	S	57	17,345	217,856	12.56	N
Hot Springs	Roanoke, VA	S	95	[27] 2,341	150,017	64.08	N
WASHINGTON:							
Ephrata/Moses Lake	Pasco, WA	N	83	6,620	164,336	24.82	N
WEST VIRGINIA:							
Beckley	Charleston, WV	S	59	21,553	55,123	2.56	N
Clarksburg/Fairmont [28]	Pittsburgh, PA	L	197	3,430	128,830	37.56	N
Elkins	Charleston, WV	S	141	1,808	263,096	145.52	N
Morgantown [28]	Pittsburgh, PA	L	75	7,714	128,830	16.70	N
Princeton/Bluefield	Roanoke, VA	S	96	23,826	55,123	2.31	N
WISCONSIN:							
Beloit/Janesville	Madison, WI	S	47	409	259,000	633.25	[10] N
Manitowoc	Green Bay, WI	N	39	[29] 1,599	393,296	245.96	Y
WYOMING:							
Worland	Billings, MT	S	164	2,543	352,655	138.68	N

[1] Excludes points in Alaska, Hawaii, and the Pacific.
[2] In order to qualify as an alternate service airport, the airport shown must enplane at least 100 passengers per day. Also, the alternate airport shown is the nearest qualifying airport, regardless of its hub classification. In some cases, there may be other, larger airports that are more distant from the EAS community but that are closer to the thresholds under which communities would be found ineligible for further subsidized service.
[3] Mileage shown is shortest highway mileage from city center of the EAS community to the alternate service airport.
[4] Carrier filed notice to terminate service at this point during FY 1989, triggering eligibility for subsidy.
[5] No subsidy rate in effect; therefore, no subsidy-per-passenger calculation can be made.
[6] Community is currently without a air service.
[7] Passengers are for YE 3/31/88, the most recent data available.
[8] Passengers are for YE 3/31/88, the most recent consecutive 12-month period without significant service disruption.
[9] Athens not included in NPRM listing, as it was expected to become subsidy-free during 1989. However, subsidy has been continued.
[10] Subsidy support was discontinued on October 1, 1989, pursuant to Pub. L. 101–45.
[11] EAS definitions were changed or exemptions granted such that current requirements are being met without subsidy support.
[12] Passengers per flight at an assumed 95% completion.
[13] Community is currently without air service to New York City.
[14] New Bedford currently receives subsidy-free service to Nantucket and Martha's Vineyard and generated 49,493 passengers in these markets in FY 1988, an average of 79 passengers per day in each direction.
[15] Point became subsidy-free during 1969.
[16] Reflects passengers projected in carrier's proposal since the community received no service during FY 1988.
[17] No data available for the fourth quarter of 1987 or the first quarter of 1988. Traffic figures reflect the three quarters ended 12/31/88 (3341) increased to reflect a full year.
[18] No data available for the fourth quarter of 1987 or the first quarter of 1988. Traffic figures reflect the three quarters ended 12/31/88 (2917) increased to reflect a full year.
[19] Laurel/Hattiesburg currently receives subsidy-free service to Memphis and generated 19,096 Memphis passengers, 31 per day in each direction.
[20] Grand Island currently receives subsidy-free service to Kansas City, Lincoln and Omaha and generated 31,075 passengers in these markets in FY 1988, an average of 50 passengers per day in each direction.
[21] North Platte and Scottsbluff receive subsidy-free service to Denver and generated 18,451 and 27,947 passengers, 29 and 45 per day in each direction, respectively, in FY 1988.
[22] After a long hiatus in service, Mesa began service in June 1988. Therefore, traffic is based on the two quarters ended 12/31/88 (5631) x 2.
[23] Watertown currently receives subsidy-free service to New York City but did not during FY 1988.
[24] No service provided in the fourth quarter of 1987, therefore, passenger data is for the year ended 12/31/88.
[25] Pierre currently receives subsidy-free service to Minneapolis and generated 19,259 passengers, 31 per day in each direction, in FY 1988.
[26] Prime Air passengers = 837, plus 10% of 4,493 passengers for NW Airlink (NW Airlink Competition during the 4th quarter of 1987 and the first quarter of 1988 presumed to have diverted some of Prime Air's traffic, and NW Airlink no longer serves the point.)
[27] Based on 213 service days. Seasonal service from April through November 30.
[28] Clerksburg and Morgantown receive subsidy-free service to Pittsburgh and generated 37,351 and 37,765 passengers, respectively, 60 per day in each direction at each community, in FY 1988.
[29] No data available for the fourth quarter of 1987 or the first quarter of 1988. Traffic figures reflect the three quarters ended 12/31/88 (1199) x 4/3.

Issued in Washington, DC on: December 19, 1989.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 89–29780 Filed 12–19–89; 2:21 pm]

BILLING CODE 4910-62-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Statement of Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the conversion of the Office of Internal Audit to the Office of the Inspector General, the Transfer of the committee management function from the Directorate of Health Sciences to the Secretary of the Commission, and to reflect minor editorial changes made since the changes published December 28, 1988, 53 FR 52407.

DATE: December 22, 1989.

ADDRESS: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–492–6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the

Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provision of the Act

List of Subjects in 16 CFR Part 1000

Organization and functions (Government agencies).

Dated: December 15, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Accordingly, chapter II, subchapter A of 16 CFR is amended by revising part 1000 to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.

1000.1 The Commission.
1000.2 Laws administered.
1000.3 Hotline.
1000.4 Commission addresses.
1000.5 Petitions.
1000.6 Commission decision and records.
1000.7 Advisory opinions and interpretations of regulations.
1000.8 Meetings and hearings; public notice.
1000.9 Quorum.
1000.10 The Chairman and Vice Chairman.
1000.11 Delegation of functions.
1000.12 Organizational structure.
1000.13 Directives system.
1000.14 Office of the General Counsel.
1000.15 Office of Congressional Relations.
1000.16 Office of the Secretary.
1000.17 Office of the Inspector General.
1000.18 Office of Equal Employment Opportunity and Minority Enterprise.
1000.19 Office of the Executive Director.
1000.20 Office of Program Management and Budget.
1000.21 Office of Planning and Evaluation.
1000.22 Office of Information and Public Affairs.
1000.23 Directorate for Epidemiology.
1000.24 Directorate for Economic Analysis.
1000.25 Directorate for Engineering Sciences.
1000.26 Directorate for Health Sciences.
1000.27 Directorate for Compliance and Administrative Litigation.
1000.28 Directorate for Administration.
1000.29 Directorate for Field Operations.

Authority: 5 U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)). The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

§ 1000.2 Laws administered.

The Commission administers five acts:

(a) The Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)).

(b) The Flammable Fabrics Act (Pub. L. 90–189, 67 Stat. 111, as amended (15 U.S.C. 1191, et seq.)).

(c) The Federal Hazardous Substances Act (Pub. L. 86–613, 74 Stat. 380, as amended (15 U.S.C. 1261, et seq.)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, 84 Stat. 1670, as amended (15 U.S.C. 1471, et seq.)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84–930, 70 Stat. 953, 15 U.S.C. 1211, et seq.)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1–800–638–CPSC (1–800–638–2772).

(b) The Commission also operates a toll-free Hotline by which deaf or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states except Maryland is 1–800–638–8270. The teletypewriter number for use in Maryland is 1–800–492–8104.

§ 1000.4 Commission addresses.

(a) The principal offices of the Commission are at 5401 Westbard Avenue, Bethesda, Maryland. All written communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207, unless otherwise specifically directed.

(b) The Commission has 3 Regional Centers which are located at the following addresses and which serve the states indicated:

(1) Central Regional Center, 230 South Dearborn St., room 2944, Chicago, Illinois 60604; Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, room 301, New York, New York 10048; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

(3) Western Regional Center, U.S. Customs House, 555 Battery St., room 415, San Francisco, California 94111; Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or revoke a rule or regulation by submitting a written request to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission action. Copies of Minutes or of a Record of Commission action may be obtained upon written request from the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or may be examined in the public reading room at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions.* Upon written request, the General Counsel provides written advisory opinions interpreting the acts the Commission administers. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for issuance of advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, Washington, DC

20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Interpretations of regulations.* Upon written request, the Associate Executive Director for Compliance and Administrative Litigation will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards. Interpretations of regulations represent the interpretations of the staff and may be changed or superseded by the Commission. Requests for such interpretations should be sent to the Associate Executive director for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207. Requests for interpretations of administrative regulations (e.g., Freedom of Information Act regulations) should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 5401 Westbard Avenue, Bethesda, Maryland. Meetings of the Commission for the purpose of jointly conducting the formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish notice of any proposed hearing in the **Federal Register** and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR part 1012).

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business.

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission annually elects a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are published in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;

(2) Office of Congressional Relations;

(3) Office of the Secretary;

(4) Office of the Inspector General;

(5) Office of Equal Employment Opportunity and Minority Enterprise;

(6) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management and Budget;

(2) Office of Planning and Evaluation;

(3) Office of Information and Public Affairs;

(4) Directorate for Epidemiology;

(5) Directorate for Economic Analysis;

(6) Directorate for Engineering Sciences;

(7) Directorate for Health Sciences;

(8) Directorate for Compliance and Administrative Litigation;

(9) Directorate for Administration;

(10) Directorate for Field Operations.

§ 1000.13 Directives system.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures. A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all the Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register.**

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress. It performs liaison duites for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of the Secretary.

The Office of the Secretary prepares the Commission's agenda, schedules and coordinates Commission business at official meetings, and records, issues, and stores the official records of Commission actions. The Office prepares and publishes the Public Calendar under the Commission's Meetings Policy. The Office exercises joint responsibility with the Office of the General Counsel for the interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act, and prepares reports required by these acts. It issues Commission decisions, orders, rules, and other official documents, including **Federal Register** notices, for and on behalf of the Commission and controls the use of the Commission seal. The Secretary of the Commission also serves as the agency's Advisory Committee Management Officer, and is responsible for managing the establishment, procedures, and accomplishments of all advisory committees utilized by the Commission.

The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office maintains the records of continuing guaranties of compliance with applicable standards of flammability issued under the Flammable Fabrics Act (FFA) which are filed with the Commission in accordance with provisions of section 8(a) of the FFA (15 U.S.C. 1197(a)). Upon request, the Office of the Secretary provides appropriate forms to persons and firms desiring to execute continuing guaranties under the FFA. The Office also supervises and administers the public reading room.

§ 1000.17 Office of the Inspector General.

The Office of the Inspector General is an independent office established under the provisions of the Inspector General Act of 1978, 5 U.S.C. Appendix, as amended by the Inspector General Act Amendments of 1988. This Office independently, or at the direction of the Chairman, initiates, conducts, supervises, and coordinates audits, operations reviews, and investigations of Commission programs, activities, and operations, to prevent and detect waste, fraud, and abuse. Reporting only to the Chairman, and under his or her general supervision, the Office also makes recommendations to promote economy, efficiency, and effectiveness within the Commission's programs and operations. The Office receives and investigates complaints or information concerning possible violations of law, rules, or regulations, mismanagement, abuse of authority, and waste of funds. It reviews existing and proposed legislation concerning the economy, efficiency, and effectiveness of such legislation on Commission operations.

§ 1000.18 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise assures the agency complies with all laws, regulations, rules and internal policies relating to equal employment opportunity. It assures compliance with the Small Business Act as it relates to small and disadvantaged business utilization. The Office also conducts the Upward Mobility Program.

§ 1000.19 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management and Budget; the Office of Planning and Evaluation; and the Office of Information and Public Affairs.

§ 1000.20 Office of Program Management and Budget.

(a) The Office of Program Management and Budget is responsible for implementing the Commission's regulatory decisions, overseeing the development of the Commission's budget, program goals and objectives, and hazard program plans. The Office, in consultation with other offices and directorates, prepares, for the Commission's approval, the annual budget requests to Congress and the Office of Management and Budget and the operating plan for each fiscal year. It manages the execution of the Commission's budget. The Office recommends to the Office of the Executive Director actions to enhance effectiveness of the Commission's programs and activities.

(b) The Office of Program Management and Budget is also responsible for managing the hazard-related programs contained in the Commission's operating plan and carries out other tasks assigned by the Executive Director. The Office is responsible for Information Resources Management activities and for international liaison activities relating to consumer safety. Program Managers within the Office provide overall direction to all hazard program projects, including those involving mandatory and voluntary standards, petitions, and emerging hazards. This is especially true where functional responsibility extends across the organizational lines of other Commission offices and directorates. The Program Managers' authority complements the functional authority vested in the Associate Executive Directors and other Office Directors to assure that relevant legal, technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision. The Office carries out regular program reviews assessing the progress of individual projects to reach goals established by the Commission. The Office consults with the other staff directorates and offices in developing strategies to meet these goals. It is responsible for resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

§ 1000.21 Office of Planning and Evaluation.

The Office of Planning and Evaluation reports to the Executive Director and is responsible for the Commission's planning and evaluation activities. It develops integrated short and long range plans for achieving the Commission's goals and objectives. The office is responsible for the development and analysis of both major policy and operational issues. Evaluation studies are conducted to determine how well the Commission fulfills it mission. These studies include impact and process evaluations of Commission programs, projects, functions, and activities. Recommendations are made to the Executive Director for changes to improve their efficiency and effectiveness. Management analyses and special studies are also conducted. These cover, but are not limited to, internal controls, organizational performance, structure, and productivity measurement. Recommendations are made to the Executive Director for improving management efficiency and effectiveness.

§ 1000.22 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3 of this chapter. The Office also is responsible for implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

§ 1000.23 Directorate for Epidemiology.

The Directorate for Epidemiology, which is managed by the Associate Executive Director for Epidemiology, is responsible for injury and human factors

data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-related hazards and potential hazards, determines the frequency, severity, and distribution of the various types of injuries, and investigates their causes. It assesses the effects of product safety standards and programs on consumer injuries and conducts epidemiological and human factors studies and research in the field of consumer product-related injuries. The Directorate provides statistical support for all other Commission organizations, including, but not limited to, standards development, certification programs, and sampling for field inspection programs. It performs risk assessments based on accident data for physical, thermal, and electrical hazards in consumer products. It maintains the National Injury Information Clearinghouse and manages the National Electronic Injury Surveillance System (NEISS).

§ 1000.24 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs such regulatory analyses and such studies of costs and benefits of CPSC actions as are required by the Consumer Product Safety Act, The National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission.

§ 1000.25 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate provides engineering and physical science support to all of the Commission organizations, activities and programs. The Directorate is responsible for the development and evaluation of product safety standards, and product safety tests and test methods, based on engineering and other physical sciences, to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It provides engineering and technical expertise to the Commission, conducts engineering tests and studies of the safety of consumer products, and evaluates industry voluntary standards efforts. It performs and monitors research in engineering and other physical sciences and manages the Commission's engineering laboratory and engineering test facility. The Directorate provides engineering services in support of the Commission's enforcement activities and monitors state laboratory testing contracts. It coordinates engineering research, testing, and evaluation activities with the National Institute of standards and Technology and other federal agencies, private industry, and consumer interest groups. The Directorate conducts statistical analyses for the engineering aspects of standards development, quality control, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including test and analyses conducted in the field. The Directorate analyzes accident data, develops accident scenarios, and recommends options to eliminate unreasonable risks.

§ 1000.26 Directorate for Health Sciences.

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilities include development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The Directorate also provides scientific and medical expertise to the Commission and its develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and physiological bases which cause some population segments to be at special risk. It performs risk assessments for chemical hazards, and physical hazards based on medical injury modeling in consumer products. It performs or monitors research, and conducts studies of the safety of or of improving the safety of consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on how chemical products are manufactured and it provides scientific and laboratory support to the Commission's and other laboratories and other chemical or toxicological testing facilities. It provides scientific and medical support to all commission organizations, activities, and programs. The Directorate provides scientific liaison with the National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, other federal agencies and programs, and organizations concerned with reducing the risks to consumers from exposure to chemical hazards.

§ 1000.27 Directorate for Compliance and Administrative Litigation.

The Directorate for Compliance and Administrative Litigation, which is managed by the Associate Executive Director for Compliance and Administrative Litigation, conducts or supervises the conduct of compliance and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It directs the enforcement efforts of the field offices

and provides program guidance, advice, and case guidance to field offices and participates in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products subject to the reporting requirements of section 15 of the Consumer Product Safety Act and the Federal Hazardous Substances Act, gives public warning to consumers where appropriate, and provides guidelines and directs the field in negotiating and monitoring corrective action plans designed to recall products which fail to comply with specific regulations. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

§ 1000.28 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for general policy and internal control within his or her functional area of administrative responsibility. The Directorate's functional responsibility includes all general and delegated administrative functions supporting the Commission in the areas of financial management, personnel administration, information processing and telecommunications, procurement, and general administrative support services. The Directorate is responsible for the payment, accounting, and reporting of all expenditures within the Commission and for operating and maintaining the Commission's accounting system and subsidiary Management Information System which allocates staff work time and costs to programs and projects. The Directorate is responsible for all aspects of personnel management for the Commission, including recruitment and placement, position classification, employee and labor-management relations, and training and executive development. The Directorate provides the operational interface with the Food and Drug Administration's Parklawn Computer Center, manages the Commission's Office Automation System and personal computers, and provides ADP operational and programming support for data collection, information retrieval, report generation, and statistical and mathematical requirements of the Commission. The Directorate is responsible for all CPSC contracts and procurement services, and provides general administrative support services including property and space management, physical security, printing and reproduction, records management, transportation, mail, warehousing and library services.

§ 1000.29 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative, compliance, and consumer information and public affairs activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission, identify product related incidents and investigate selected injuries or deaths associated with consumer products, and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government office.

[FR Doc. 89-29725 Filed 12-21-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket No. RM87-5-001; Order No. 497-A]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Order on Rehearing

Issued December 15, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order on rehearing.

SUMMARY: The Commission issued a final rule in order No. 497 (53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 on June 1, 1988, adopting standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their gas marketing affiliates.

This order on rehearing denies in part and grants in part rehearing of Order No. 497. This order also amends the rule to extend the reporting requirements in § 250.16 (a), (c), and (d) for an additional year, from December 31, 1989 to December 31, 1990.

EFFECTIVE DATE: With the exception of the Commission's extension of the reporting requirements in Order No. 497, the revisions made to the final rule in this order on rehearing are effective January 22, 1990. In order to prevent a gap in the rule's reporting requirements, the amendments to § 250.16 (a), (c), and (d), which contain the sunset date for the rule's reporting requirements are effective January 1, 1990.

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SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

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Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Order on Rehearing

Issued December 15, 1989.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying in part and granting in part rehearing of Order No. 497 issued in this docket and is clarifying certain provisions of the final rule.

II. Public Reporting Burden

This order on rehearing makes modest revisions in the reporting requirements contained in Order No. 497 which, collectively, do not materially alter the overall reporting burden in the final rule that is already in effect. The order extends these reporting requirements and the sunset provision for an additional year, from December 31, 1989 to December 31, 1990. The Office of Management and Budget approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1989.

III. Background

The Commission issued a final rule in this proceeding on June 1, 1988.[1] The final rule was the result of a lengthy rulemaking proceeding that began with the issuance of a notice of inquiry (NOI) in November 1986.[2] The Commission issued the NOI in response to several petitions for rulemaking [3] and several cases that had raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates.[4]

In response to the comments received to the NOI, the Commission issued a notice of proposed rulemaking (NOPR) on June 2, 1987.[5] The NOPR proposed to establish standards of conduct to govern the pipeline-affiliate relationship and reporting requirements to provide data to determine whether anticompetitive practices were occurring. The NOPR also outlined other possible approaches to prevent undue discrimination such as divorcement,[6] divestiture, and organizational separation of the pipeline and its affiliate. Additionally, the NOPR sought comments as to whether only Order No. 436 pipelines should be permitted to have marketing affiliates.

In the final rule the Commission adopted the standards of conduct and reporting requirements outlined in the NOPR, with certain modifications. The Commission also established a tentative sunset date of December 31, 1989 for the rule's reporting requirements. The Commission added that it would examine the need to extend the rule's reporting requirements at the end of this period and would do so if such action was necessary. Other changes were made to reduce the reporting requirements and to eliminate reporting of data that might result in the release of competitively sensitive information.[7] The final rule also restricted the availability of discounts to affiliates of pipelines that do not transport under a blanket certificate under subpart G of part 284 of the Commission's regulations. Under the final rule, such a pipeline may not charge an affiliate a rate lower than the highest rate it charges in any transaction not involving its marketing affiliate.

The Commission declined in the final rule to require divorcement, divestiture, or organizational separation or to limit marketing affiliates to Order No. 436 pipelines. The Commission, however, stated that it might impose remedies such as divorcement or divestiture on a case-by-case basis where necessary to prevent competitive abuses.

IV. Discussion

The Commission received 44 rehearing requests as well as a number of requests to stay all or portions of the final rule or to waive particular provisions of the rule for individual pipelines.[8]

Many of the arguments made on rehearing are the same as those raised in the comments to the NOI and the NOPR. Pipelines and their affiliates continue to argue that the rule is unnecessary, is overly burdensome and would force the pipeline to release confidential data that would put the affiliated marketer at a competitive disadvantage.[9] Independent marketers and producers argue that the rule did not go far enough to prevent affiliate abuses. They argue that the Commission should have ordered divestiture [10] or at least structural separation of pipelines and their affiliates.[11]

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[1] 53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 (June 1, 1988).

[2] "Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" on November 14, 1986 [51 FR 41,982 (Nov. 20, 1986), FERC Stats. & Regs. ¶35,520]. The Commission received 107 responses to the NOI.

[3] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86–19–000, Minnesota Department of Public Service in Docket No. RM87–1–000, and Shell Gas Trading Company in Docket No. RM87–2–000.

[4] Northern Natural Gas Co., Docket No. RP82–71–001, *et al.*, 20 FERC ¶61,040 (1982); Mountain Fuel Resources, Inc., Docket No. RP86–87–001, 36 FERC ¶61,150 (1986); ANR Pipeline Co., Docket No. RP86–106–000, 35 FERC ¶61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipeline Co., Docket No. CP86–584–000, 36 FERC ¶61,282 (1986); Southern Natural Gas Co., Docket No. CP86–277–001, *et al.*, 36 FERC ¶61,275 (1986); Texas Gas Transmission Corp., Docket No. CP86–349–001, 36 FERC ¶61,274 (1986); Arkla Exploration Co., Docket No. CI86–376–000, *et al.*, 37 FERC ¶61,011 (1986); Southern Natural Gas Co., Docket No. CI86–371–000, *et al.*, 36 FERC ¶61,401 (1986); Tenneco Oil Co., *et al.*, Docket No. CI86–254–000, *et al.*, 36 FERC ¶61,399 (1986).

[5] 52 FR 21,578 (June 8, 1987), FERC Stats. & Regs. ¶32,445. The Commission also held an Opportunity for Oral Presentation on October 20, 1987, to allow presenters to air their comments more fully.

[6] Under divorcement, a pipeline would be allowed to have a marketing affiliate but could do no business with the affiliate.

[7] The NOPR proposed that a pipeline make publicly available a log of all transportation transactions. The final rule required such a log for affiliate transactions only. The NOPR also proposed to require (1) that the log identify any affiliation of the requestor of transportation with the supplier of the gas and (2) that pipeline transportation personnel maintain a log of contacts. Neither of these proposals was adopted in the final rule. Rather than require the log to identify the supplier and the end user as proposed in the NOPR, the final rule required identification only of the production area and the state where the gas is consumed. The final rule delayed the initial filing date for the information from 30 to 60 days. The NOPR proposed updating non-log information every 30 days while the final rule required such updates as a quarterly basis.

[8] The list of petitioners is contained in the Appendix. The stay and waiver requests are being addressed in a separate order issued contemporaneously with this order.

[9] *See, e.g.*, Interstate Natural Association of America (INGAA), Enron Interstate Pipelines (Enron), Tenneco Gas Pipeline Group (Tenneco).

[10] Access Energy Corp.

[11] *See, e.g.*, Hadson Gas Systems (Hadson), Producer Associations, National Gas Clearinghouse, Inc. The Maryland People's Counsel also argues that the Commission should have allowed marketing affiliates only for Part 284 Subpart G pipelines.

In the final rule, however, the Commission determined that the potential for anticompetitive conduct between a pipeline and its affiliate was sufficient to warrant action. In determining the appropriate action to take, the Commission sought to fashion a rule that would prevent these abuses with the least regulatory infringement necessary. The Commission believes that the course it adopted in the final rule of establishing standards of conduct and reporting requirements has been effective in curbing affiliate abuses without the need for more intrusive measures. To the extent that the Commission addressed the above arguments in the final rule, it will not reiterate its rationale at great length on rehearing. Several arguments, however, do merit additional discussion. The Commission is also clarifying certain provisions of the rule and modifying certain aspects of the rule. Any rehearing requests that may be filed in response to this order on rehearing should be limited to new matters raised by this order.

A. Need for the Rule.

The Commission continues to believe that the potential for affiliate abuse is sufficiently substantial to support the rule as promulgated.

In adhering to its approach adopted in the final rule, the Commission is not persuaded by the pipelines' arguments that the rule is unnecessary. As the Commission noted in the NOPR, the Commission had received complaints of abuses. Comments received in response to the NOI indicated that there were no industry-wide standards as to the type of activities that could lead to affiliate abuse and that undetected anticompetitive activities could be occurring. A substantial portion of pipelines' transportation transactions were and are being conducted on behalf of their marketing affiliate, and pipelines have an economic incentive to favor their affiliates. Thus, the potential for abuse was and is significant enough to warrant Commission action. Also, absent established standards, pipelines would run the risk that their practices with their affiliates might later be found to be unlawful. The standards of conduct provide guidelines for the Commission's Enforcement Task Force in dealing with complaints alleging pipeline-affiliate abuse, and establish a framework in which a pipeline and its affiliate can structure their relationship in a lawful manner. These standards, together with the rule's reporting requirements, give the public and the Commission staff the ability to detect and prevent unlawfully discriminatory activity.

The Commission has also concluded that stronger action, such as divestment, divorcement, or organizational separation is not supported by the record presently before the Commission. Nor does the Commission believe it necessary to require a pipeline to have a blanket certificate under subpart G of part 284 in order to conduct transportation transactions with its affiliate.[12] This conclusion is confirmed by our analysis of the data submitted by pipelines in response to the rule's reporting requirements. The data do not reveal any pattern of affiliate favoritism in areas such as discounts, queue positioning, processing time for transportation requests, take-or-pay, or the disposition of requests. The Commission will continue to monitor the information submitted to determine if stronger generic action is necessary and will continue to act on a case-by-case basis to prevent affiliate abuse where such action is appropriate.[13]

B. Scope of the Rule

1. Entities covered by the rule

In response to many rehearing requests the Commission is revising and clarifying the types of entities and transactions that are covered by the rule.[14]

First, the Commission is excluding only from the rule's *reporting requirements* in § 250.16, but not from the standards of conduct, transactions involving an affiliate that a pipeline conducts pursuant to an individual certificate previously issued under section 7(c) of the Natural Gas Act (NGA).[15] These certificates were issued under subpart A of part 157 of the Commission's regulations pursuant to detailed applications by the pipelines for authorization to provide such service. The applications disclosed the affiliate involvement and all other relevant details of these transactions, and the Commission fully considered these facts before issuing the certificates. These certificates are already subject to whatever reporting requirements the Commission deemed appropriate to prevent discrimination in providing the requested service, and the pipelines have relied on these certificates as issued. Therefore, the Commission believes that to subject these transactions to the additional reporting requirements in the rule would be unnecessarily burdensome. A pipeline, however, continues to be subject to the standards of conduct in the rule regardless of the type of certificate authority it possesses to transport on behalf of an affiliate.

The Commission has authorized marketing affiliate transactions in individual transportation certificates in the past, and will not disturb ongoing transportation conducted pursuant to previously issued certificates of that type. However, as a matter of policy, in the future the Commission will not issue new certificates for individual transportation transactions that involve transportation of gas sold by the pipeline's marketing affiliate unless the pipeline agrees to comply with all of the requirements of this rule, including the reporting requirements.

Second, the Commission is clarifying the types of transactions with a marketing affiliate that make a pipeline subject to the final rule. Section 250.16 of the regulations, as promulgated in the rule, exempts from the rule a pipeline "that does not conduct *any* transactions with its affiliated marketer." In the NOPR and the final rule the Commission explained that it was concerned with possible abuses in providing transportation services. Thus, the standards of conduct in the final rule related to a pipeline's transportation rather than merchant function. Similarly, the reporting requirements contained in the final rule required the filing and

[12] In this regard, the Commission notes that the issue is largely moot in that all of the major interstate pipelines have either accepted or applied for such certificates.

[13] In this regard, the Commission notes its recent order in Docket No. RP88-68-000, *et al., interia alia,* directing Trancontinental Gas Pipe Line Corporation (Transco) to show cause why its recent transactions with its marketing affiliate TEMCO are not in violation of Order No. 497 and why Transco should not be required to divest or divorce itself from TEMCO.

[14] After the final rule went into effect, the Commission adopted Order No. 509, "Interpretation of, and Regulations under, Section 5 of the Outer Continental Shelf Lands Act Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf," Order No. 509, 53 FR 50.925 (Dec. 19, 1988), III FERC Stats. & Regs. ¶ 30.842 (Dec. 9. 1988), *reh'g. denied,* 54 FR 8301 (Feb. 28, 1989), 46 FERC ¶ 61,177 (Feb. 21, 1989). Order No. 509 provides every interstate pipeline that transports gas on or across the Outer Continental Shelf with a blanket certificate authorizing and requiring nondiscriminatory transportation of natural gas on behalf of others. These certificates are issued pursuant to subpart K of part 284, a new subpart promulgated in the final rule. The Commission is amending the regulatory text of Order No. 497 to bring pipelines holding these subpart K certificates within the scope of the rule.

The Commission is also deleting the requirement in the regulatory text that part 157, subpart E pipelines are included in the rule because such a requirement is redundant. Subpart E pipelines already are subject to subpart G of part 284.

[15] 15 U.S.C. 717f (1982).

maintenance of data regarding transportation requests and service. As this type of potential abuse was the focus of the rule, the use of the word "any" in this context is overbroad. Therefore, the Commission is revising this section to exempt from the rule pipelines that do not conduct transportation transactions with an affiliate, rather than any transactions.[16] Simply put, if a pipeline does not transport on behalf of an affiliate, there is no opportunity for it to provide the affiliate a preference in transportation. The Commission intends the term transportation, as used in this rule, to include any transactions which provide for receipt of gas at one point and redelivery of gas to a second point, including exchanges, back-hauls and other transactions in which the gas being transported is owned, brokered or sold by the affiliate.

Third, in response to many rehearing requests, the Commission is clarifying the types of activity that constitute marketing [17] for purposes of the rule. For the purposes of defining the scope of this rule, a marketer generally is one who either: (1) Makes a "first sale" of gas as the term "first sale" is defined in section 2(21) of the NGPA[18] and codified in § 270.203 of the Commission's regulations; or (2) who makes a sale for resale of gas subject to the NGA. There are sellers of gas, however, that the Commission does not intend to include in the scope of this rule: Producers, gatherers or processors, acting in their traditional roles, that sell gas solely from their own production,[19] gathering, or processing facilities.[20] In making these sales such entities are acting in the roles that their names imply. Hence, even though such sales might fit a dictionary definition of the word "marketing" they are not included within the scope of the term "marketing" as it is used in this rule.

That is not to say, however, that these entities can never be considered to be marketers of gas as that term is used in the rule. For example, if a producer sells gas that was produced by another, it is acting as a marketer of that gas, not the producer of the gas. Likewise, a gatherer or processor that sells gas from facilities other than its own is acting as a marketer rather than as a gatherer or processor.

There are also situations in which a pipeline or a local distribution company (LDC) is not acting in its traditional role but as a marketer. Traditionally, pipelines and LDCs purchase and arrange for the transportation of gas for their own system supply and then sell that gas to their customers. It is when a pipeline or LDC acts outside of this role that it can engage in the types of sales for which an independent marketer could compete. In making such sales the affiliated pipeline or LDC is competing for space on the transporting pipeline. For example, when a pipeline or LDC sells gas off-system, it is not providing a traditional service to its service area customers but rather is competing with others in making that sale. As such, it is a marketer of that gas within the scope of the rule.

Similarly, when an intrastate pipeline makes sales under NGPA section 311(b),[21] it is competing with others for that sale as does an LDC that sells gas pursuant to § 284.224 of the Commission's regulations.[22] The Commission has also granted interstate pipelines blanket certificates to make interruptible sales of gas that is excess to their system supply. Because these sales are made in the open market, the pipeline must compete with others to make the sale. This raises the potential that another pipeline affiliated with that pipeline would have an incentive to favor the affiliate in transporting the off system gas sold under the blanket certificate.[23] However, we believe that the reporting requirements and prohibitions against undue discrimination contained in those blanket certificates are sufficient to prevent the potential abuses targeted by this rule. Therefore, we are excluding from the scope of the rule transactions involving interruptible sales of surplus system supply made pursuant to a blanket certificate issued for that purpose. Thus, neither the reporting requirements nor the standards of conduct in this rule will be applied to those transactions.

Therefore, although the term "marketing" as it is used in this rule generally encompasses first sales of gas, it excludes certain first sales that the Commission does not intend to encompass within the rule, and includes other sales in which anticompetitive conduct could occur and that the Commission does wish to encompass in the rule. Although a part of the activities of an affiliated producer, gatherer, processor, interstate or intrastate pipeline, or LDC may fall outside of the scope of the rule, those entities will be considered marketers for purposes of the rule in the illustrative situations discussed above. In summary, the Commission has determined that the following activities will be treated as "marketing" within the scope of the rule: (1) "first sales" of gas, or sales of gas for resale by a seller that is not an interstate pipeline, except when the seller is selling solely its own production or when the seller is selling gas solely from its own processing or gathering facilities; (2) off-system sales by an affiliated intrastate pipeline or sales under NGPA section 311(b); and (3) off-system sales by an affiliated LDC or sales under section 284.224 of the Commission's regulations.

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[16] Because the rule is designed to ensure that a marketing affiliate does not receive a preference in the provision of transportation services, the standards of conduct implement that purpose by extending to areas of the pipeline-affiliate relationship that are ancillary to transportation. For example, one standard prohibits a pipeline from providing its affiliate with information the pipeline receives from a non-affiliated shipper. Another standard provides that if a pipeline shares information related to the transportation, sale or marketing of gas with its affiliate, it must also contemporaneously disclose the information to all potential shippers. Yet another requires that the employees of the pipeline and the affiliate function independently of each other to the maximum extent possible. And the data required to be reported encompasses non-transportation aspects of the transportation transaction, such as, for instance, whether the pipeline's affiliate sold the transported gas at a loss.

[17] For purposes of this rule, the term "marketing" and "brokering" are synonymous.

[18] 15 U.S.C. 3301 (1982).

[19] This includes situations in which a producer is selling gas that it owns or is selling gas of other interest owners in the same well and reservoir to the extent that the producer has contractual authority to sell such gas. The Commission has distinguished a producer that sells its own production from a producer that is acting as a marketer. In OXY USA Inc., 44 FERC ¶ 61,439 (1988) *reh'g denied* 46 FERC ¶ 61,256 (1989), the Commission granted OXY an unlimited term blanket certificate to make sales of its own production. In this context OXY was acting in its traditional role as a producer. However, the order limited the term in which OXY could act as a marketer. This limitation on OXY's marketing function was included because OXY is affiliated with an interstate pipeline.

[20] There may be circumstances in which a pipeline or its affiliate may attempt to exercise monopoly power over these types of facilities to deny non-affiliates access to transportation services. The Commission will deal with these situations on an individual basis. *See* Northern Natural Gas Company, 43 FERC ¶ 61,473 (1988); and Northwest Pipeline Corporation, 43 FERC ¶ 61,491 (1988).

[21] As codified at 18 CFR 284.142 (1988). That provision allows intrastate pipelines, without prior Commission approval, to sell gas to an interstate pipeline or local distribution company served by an interstate pipeline.

[22] That provision, in part, allows LDCs to make sales to interstate pipelines and other LDCs served by interstate pipelines.

[23] The Commission has approved this type of certificate in several circumstances. *See* Northern Natural Gas Co., 42 FERC ¶ 61,303 (1988), *reh'g denied* 43 FERC ¶ 61,519 (1988), Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988) *reh'g granted*, 44 FERC ¶ 61,164 (1988); El Paso Natural Gas Company, 45 FERC ¶ 61,322 (1988), Southern Natural Gas Company, 45 FERC ¶ 61,461 (1988); Natural Gas Pipeline Company, 45 FERC ¶ 61,465 (1988); CNG Transmission Corporation, 45 FERC ¶ 61,466 (1988).

2. First sale status

In the final rule, the Commission retained the "first sale" status of certain sales by pipeline marketing affiliates. Because of this status, affiliate sales of certain NGPA categories of gas are not subject to the Commission's NGA jurisdiction. Without this status, the affiliate would be subject to price regulation under section 4 of the NGA.[24]

The Producer Associations suggest that the Commission act expeditiously on applications filed by the public to remove this "first sales" status on an individual basis. It states that this would give the pipeline an incentive to deal with the public in an equitable manner. While the Commission continues to believe that it can effectively deter affiliate abuse by regulating the pipeline rather than the marketing affiliate it will use its authority to act under ¶ 270.203 to remove an affiliate's first sale status if individual circumstances so warrant.

3. Ten percent presumption of control

In the final rule the Commission stated that "affiliate" when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person."[25] The Commission stated that the term " 'control' . . . includes, but is not limited to, the possession, directly or indirectly, of the authority to direct or cause the direction of the management or policies of a company." The Commission added that a voting interest of 10 percent or more created a presumption of control, and therefore an affiliate relationship.

Several joint venture pipelines request clarification as to whether they are "affiliates" of their pipeline owners.[26] They argue that although these owners may individually have more than a 10 percent voting interest, no one owner can control the pipeline to the extent that it would give preference to an individual owner's affiliate.

The Commission believes that whenever a pipeline and its marketing or brokering entity share overlapping economic interests the potential arises that the pipeline may grant its affiliate a preference in order to benefit the corporate whole. The greater the degree of such overlapping interests, the greater the potential for abuse. It is because overlapping economic interests create an incentive to grant an affiliate preference that the Commission adopted a broad definition of control for purposes of the rule. This definition is not limited to the ability to directly control the management of a company but also includes situations in which a pipeline, by itself or in conjunction with others, has an economic incentive to favor an affiliate. This situation can arise, for example, in the case of a joint venture pipeline in which the pipeline is owned by several other pipelines. In this situation, a single pipeline owner may not be in a position to favor its affiliate over the affiliates of other pipeline owners. However, the pipeline owners as a group have an incentive to grant preferences to their own affiliates over other shippers. This situation could lead to a practice of granting preferences to these affiliates to the detriment of other shippers.

While any overlapping economic interest gives rise to the possibility that a preference may occur, a 10 percent voting interest raises this potential to a level where close monitoring of the pipeline-affiliate relationship is necessary. Thus, the existence of a 10 percent or more voting interest is a sufficient degree of economic involvement to create a rebuttable presumption that an affiliate relationship exists. Accordingly, the Commission has revised the definition of "control" in ¶ 161.2 to read as follows:

"Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

For voting interests of less than 10 percent or for other shared economic interests, the Commission may examine, on a case-by-case basis, the particular circumstances involved in the relationship between the pipeline and a natural gas marketer to determine whether a sufficient incentive and opportunity exists to favor the marketer. If the Commission concludes that the incentive and ability to engage in anticompetitive conduct exists, it will require the pipeline to conform to the rule's standards of conduct and reporting requirements.[27]

C. Standards of Conduct

The final rule established standards of conduct to govern the pipeline-affiliate relationship. These standards provide that a pipeline:

(1) must apply a tariff provision relating to transportation in the same manner to the same or similarly situated persons if there is discretion in the application of the provision;

(2) must strictly enforce a tariff provision for which there is no discretion in the application of the provision;

(3) may not give its marketing affiliate a preference in scheduling, transportation, storage or curtailment priority;

(4) must process all similar requests for transportation in the same manner and within the same period of time;

(5) may not disclose to an affiliate any information to secure transportation service the pipeline receives from a non-affiliated shipper;

(6) must contemporaneously make available to all potential shippers any information that it gives to an affiliate regarding the transportation of natural gas and gas sales and marketing;

(7) must, to the maximum extent practicable, provide for the independent functioning of operating personnel of the pipeline and the affiliate;

(8) may not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer or end-user) to obtain services from an affiliate of the pipeline or to an offer by the pipeline to provide or expedite transportation service to its affiliate for the released gas; and

(9) must identify, upon request by a potential shipper, any information relating to released gas that is mitigating the pipelines's take-or-pay liability if it has provided this information to its marketing affiliate.

The rule required pipelines to file procedures with the Commission by September 12, 1988, to enable shippers and the Commission to determine how the pipeline is complying with these standards of conduct.

In addition to these standards the Commission is adopting two additional standards. One, if a pipeline offers a transportation discount to an affiliated marketer, it must make a comparable and contemporaneous discount available to all similarly situated non-affiliated shippers. This standard is in addition to the previously adopted restriction (*see* § 284.7(d)(5)(ii)(B)) on selective discounting by pipelines that do not have Part 284 blanket certificate. In Order No. 497, the Commission recognized that selective discounts by pipelines have the potential for giving rise to undue discrimination. To prevent

[24] 15 U.S.C. 717(c) (1982).

[25] The definition of "affiliate" is taken from section 2(27) of the NGPA. 15 U.S.C. 3301 (1982).

[26] Sea Robin Pipeline Company, Great Lakes Transmission Company, High Island Offshore System, Trailblazer Pipeline Company, Northern Border Pipeline Company. These requests are being addressed in a separate order that is being issued contemporaneously with this order.

[27] *See* Midwest Gas Users Association v. FERC, 833 F.2d 341 (D.C. Cir. 1987).

this discrimination, the Commission restricted the ability of a non-open access pipeline to provide discounts to its affiliate. Upon further consideration, the Commission has determined that the additional standard that it is promulgating in this order is also necessary to prevent affiliate abuse. This new standard applies to section 311 pipelines as well as pipelines that have a part 284 blanket certificate. If a pipeline is required to make the same discount available to other shippers that it offers to its affiliate, the pipeline will not be able to grant its affiliate a preferential discount.

Second, the Commission is establishing a standard that a pipeline must maintain its books and records separately from those of its affiliate.[28]

Pipelines must revise their standards to include these new factors by January 22, 1990. (See § 161.3(j).)

1. Discretionary enforcement of tariff priority (§ 161.3(c))

The Commission is adopting a suggestion of EnTrade to require pipelines to maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers. In this way the Commission and the public will be able to determine whether a pipeline is granting waivers on a nondiscriminatory basis. This information must also be included in the transportation log that is filed with the Commission and to which the public is to have electronic access. (See new § 250.16(b)(xx)).

2. Strict enforcement of tariff provisions (§ 161.3(b))

Pipelines argue that this standard is unreasonable because minor operational and administrative deviations from a written tariff are an integral part of pipeline operations.[29] Enron argues that this provision should be limited to major tariff provisions and that a blanket waiver should be granted for operational and administrative provisions that may not be identifiable in advance and that are beyond the control of the pipeline. Arkla and Enron Gas Marketing state that pipelines should be able to waive tariff provisions in accordance with Commission precedent, specifically penalty provisions if they are waived in a nondiscriminatory manner.

The Commission will not allow a pipeline the discretion to waive tariff provisions for an affiliated marketer unless the provision itself gives the pipeline discretion to waive the provision. To allow pipelines this ability, even on a nondiscriminatory basis, could require the Commission to examine, on a case-by-case basis, whether the waiver was in fact discriminatory. If a pipeline wishes to waive a provision, it must apply to the Commission to do so. Alternately, a pipeline may file revised tariff sheets proposing to grant the pipeline this discretion. In that case, the Commission and the public will have an opportunity to examine the pipeline's request and the Commission will be able to determine whether such discretion should be allowed.

3. Prohibition on giving a marketing affiliate preference in scheduling, transportation, storage, or curtailment priority (§ 161.3(e))

Shell states that this provision should be clarified so that the prohibition on preferential treatment would not be limited to these four areas. The Commission agrees and is clarifying the regulatory text accordingly. The Commission is also specifically adding a prohibition on granting an affiliate a preference in balancing.

4. Prohibition on disclosure to an affiliate of information to secure transportation received from a non-affiliated shipper (§ 161.3(e))

Shell suggests that this provision should reference "potential" shippers as well as shippers. Shell states that potential shippers should be included because a pipeline could conceivably deny transportation to a potential shipper so that it could disclose information it received in the transportation request to its affiliate. The Commission agrees and is amending the regulation to prevent this possibility.

The Commission is also adopting another suggestion by Shell. Shell states that this standard of conduct should not be limited to information regarding transportation services but should prohibit the disclosure of any information received from a non-affiliate. The Commission sees no reason to allow the pipeline to share any information received from a non-affiliated shipper with its affiliate. Additionally, the Commission notes that under § 161.3(f) a pipeline is required to contemporaneously disclose to all potential shippers any information given to its affiliate relating to natural gas transportation, sales or marketing. This could result in the public disclosure of confidential information that may have inadvertently been disclosed by a non-affiliate to the pipeline and then to the pipeline's affiliate. To prevent this possibility, the Commission is prohibiting a pipeline from sharing any information received from a non-affiliated shipper. (*See* § 161.3(e))

5. Contemporaneous disclosure of transportation and gas sales and marketing information to potential shippers (§ 161.3(f))

At the outset, the Commission has concluded that this standard of conduct applies with respect to any employee or officer that is shared by the pipeline and its marketing affiliate. Thus, any gas sales, marketing or transportation information such an employee may receive in his or her capacity as a pipeline employee will be considered information provided to the affiliate. This information must then be contemporaneously disclosed to all potential shippers. For example, if a pipeline and its parent company decide to embark on a new gas transportation program, and one of the officers of the parent is also an officer of the affiliated marketer, the pipeline has shared the information with the affiliated marketer by virtue of the fact that the officer of the parent company (who is also an officer of the affiliated marketer) knows of it.

i. Contemporaneous Disclosure

Some petitioners ask by what method this information can be made "contemporaneously" available.[30] The Commission does not wish to dictate a particular method by which pipelines can make the information contemporaneously available. The Commission notes, however, that most pipelines have established electronic bulletin boards to comply with Order No. 497 and it finds that this is an acceptable method of contemporaneously providing the information.[31] There are also commercial data distribution firms with which a pipeline may contract to post the information on an electronic bulletin board. Whatever method is used, the Commission considers "contemporaneous" to mean that potential shippers receive the

[28] This is consistent with the Commission's current standard accounting practices. *See* 18 CFR Part 201 (1988).

[29] *See, e.g.*, Enron, INGAA.

[30] *See, e.g.*, United Gas Pipeline Company (United), Enron Gas Marketing.

[31] Of the 45 pipelines that have submitted filings to the Commission regarding standards of conduct, 36 have established electronic bulletin boards to meet this requirement.

information no later than the same day the affiliate receives the information.[32]

Citizens Energy requests that the Commission clarify that this information includes all information relating to capacity. The Commission so clarifies.

ii. Transportation and Gas Sales and Marketing Information

Pipelines and their affiliates object to this provision, arguing that disclosing gas sales and marketing information to potential shippers is not necessary to prevent discrimination in the provision of transportation service and that releasing this information would place the marketing affiliate at a competitive disadvantage.[33]

Pipelines and their affiliates further argue that the term "gas sales and marketing" is not defined and could therefore apply to almost all communications between a pipeline and its affiliate.[34] Tenneco states that it interprets this provision to mean only "general" information as the Commission stated in the preamble to the final rule.

The Commission finds these arguments unpersuasive. As the Commission noted in the final rule, a pipeline may have sales or marketing information that is obtained as a result of its past monopoly power over transportation. To make this information available to its affiliate but not to others could give the affiliate a competitive advantage. Furthermore, if a pipeline and its affiliate's operating personnel are functioning independently, a pipeline's communications with the affiliate should be limited to specific information regarding the affiliate's transportation request or service. There is no need for a pipeline to share transportation, sales or marketing information with its affiliate other than information necessary to process the affiliate's request or to provide the requested transportation service. However, to the extent it does share information other than that necessary to process affiliate requests or to provide the requested service, it must share that information contemporaneously with all other potential shippers.

Shell and Access Energy argue that the standard should be expanded to include any information given to a marketing affiliate that is not contemporaneously provided to an affiliate's competitors. Hadson states that the provision should not be limited to "general" information as stated in the preamble. Otherwise, it argues that an affiliate could ask a series of "specific" questions to obtain information that would then not have to be revealed to others. The Commission believes that a requirement to disclose contemporaneously all information shared with an affiliate would be too broad. It would place an unwarranted burden on the pipeline to make the information available and could chill essential day-to-day business communications between the pipeline and its affiliate. Additionally, it could result in the disclosure of large amounts of extraneous material for which an independent marketer would have no use.

With respect to the information that must be disclosed, the Commission is clarifying that the rule requires contemporaneous disclosure of transportation, *or* gas sales, *or* marketing information. The use of the word "and" ("transportation of natural gas and gas sales and marketing * * *") in the regulatory text of § 161.3(f) could lead to the erroneous conclusion that the information required to be disclosed would have to relate to transportation plus sales plus marketing when the intent of the rule is to require disclosure of information relating to any of those matters. The Commission is revising the regulatory text accordingly.

The standard of conduct applies to all information a pipeline provides to its marketing affiliate concerning transportation or gas sales or marketing. The limited "exception" for information concerning specific transportation requests, discussed in the preamble to the final rule (memo at pp. 44–45), was not intended to swallow the rule. Indeed, if the pipeline's response to a routine transportation request includes general information, it must be contemporaneously disclosed to all potential shippers. Some examples will help illustrate the scope of this standard.

Example 1. Pipeline X intends to build a new line under part 284 of the Commission's regulations. As soon as it reveals that information to its marketing affiliate, pipeline X must contemporaneously reveal the information to all potential shippers because construction concerns natural gas transportation and marketing.

Example 2. Pipeline X discusses its intention to construct the new pipeline with a potential shipper who, in turn, discusses it with pipeline X's marketing affiliate. The marketing affiliate then asks pipeline X a specific question related to the new line. Pipeline X's answer must be contemporaneously disclosed to all potential shippers. Information concerning transportation on a new line would involve new or changed general information, even if it were transmitted to the marketing affiliate in response to a specific question.

Example 3. The new line is certificated and built. Pipeline X's marketing affiliate requests transportation for a customer. Apart from the general reporting requirements of § 250.16 or other applicable rules, pipeline X would not have to disclose the information transmitted to the marketing affiliate to perfect the transportation request or complete the transportation transaction.

iii. Potential Shippers

The rule defined "potential shippers" as "all current transportation and sales customers * * * and all persons who have pending requests for transportation service or for information regarding transportation service." * * * A number of pipelines argue that the definition of "potential shippers" in the rule is too broad in that it could include anyone who makes a casual, nonspecific inquiry regarding transportation service.[35] They suggest that the definition be limited to present or prior shippers,[36] to those who have made requests for service, [37] to parties requesting the data [38] or to shippers reasonably able to make use of the data. [39]

The Commission believes that these suggested definitions would be too restrictive. An individual that requests transportation information from a pipeline is one who may use the pipeline's transportation services in the future and therefore may be the potential object of discrimination. The Commission is unwilling to give pipelines the discretion to determine whether an information request is "casual" or "nonspecific" or whether the shippers could "reasonably" make use of the data. Although contemporaneous disclosure may impose a burden on a pipeline, such disclosure is necessary to prevent marketing affiliates from using

[32] For those pipelines that have not established bulletin boards to contemporaneously provide the information, other acceptable methods of meeting this standard include notifying non-affiliated potential shippers by telephone or facsimile or telex machine. The use of overnight or regular mail is not acceptable.

[33] *See, e.g.*, Tenneco, INGAA, Enron Gas Marketing.

[34] *See, e.g.*, Consolidated Natural Gas Company (CNG), Enron, Enron Gas Marketing.

[35] *See, e.g.*, Panhandle Eastern Pipeline Company and Trunkline Gas Company (Panhandle), Enron, INGAA.

[36] Panhandle.

[37] United, Great Lakes.

[38] Pacific Interstate Transmission Company and Southern California Gas Company (Pacific Interstate), Enron Gas Marketing.

[39] American Gas Association (AGA).

inside information to gain a competitive advantage. The Commission notes, however, that a pipeline can avoid must of this burden by establishing an electronic bulletin board to post the information as discussed below.

6. Independent Functioning of Operating Employees (§ 161.3(g)).

A number of petitioners argue on rehearing, as they did in response to the NOPR, that the Commission should require complete organizational separation of a pipeline and its marketing affiliate [40] or suggest that, at a minimum, certain personnel such as gas purchasing or accounting personnel should be separated.[41] Access Energy states that pipelines should be prohibited from using the same supply personnel to purchase gas for both the pipeline and the affiliate. Access argues that this practice implies to producers that the pipeline will purchase more higher-priced sales gas if the producer also sells his production to the affiliate. Others request clarification as to the types of employees this provision was meant to include.[42] EnTrade adds that a pipeline should be required to develop a very specific plan setting forth the personnel to be shared and how the opportunity for preferential treatment can be avoided.

The Commission does not believe that it must mandate organizational separation of a pipeline and its marketing affiliate at this time. However, the Commission reiterates that organizational separation of a pipeline and its marketing affiliate "to the maximum extent practicable" is necessary to ensure against affiliate preference and the discriminatory dissemination of information. In resolving complaints with respect to the rule, the Commission will consider the "maximum extent practicable" standard of organizational separation, among other compliance efforts. Operating employees can include officers, directors and managers as well as non-management employees. As a practical matter, the contemporaneous disclosure requirement for information received by a shared employee or officer (discussed above) provides a strong disincentive for a pipeline and its marketing affiliate to share officers or employees. For pipelines that continue to share employees or officers with their marketing affiliates, the contemporaneous disclosure requirement will allow the public to monitor a pipeline's adherence to this standard and will enable the Commission to enforce this requirement.

The Commission will examine on a case-by-case basis whether the pipeline is complying with this standard. In response to EnTrade's suggestion the Commission notes that, in implementing Order No. 497, it already has directed some pipelines to supply additional information as to how this standard is being met. This will enable the Commission to determine the extent to which these personnel have overlapping responsibilities. The Commission will address the issue of whether individual pipelines have satisfactorily complied with this standard by separate orders. If necessary, the Commission will require the pipeline to make organizational changes to separate shared employees. In addition, the requirement to contemporaneously share information that has been provided to an affiliate, as discussed above, should act to encourage pipeline and affiliate operating personnel to function independently.

Hadson and the Producer Association argue that shared employees should be required to sign an affidavit stating that they have read the standards of conduct and understand the penalties for violating those standards. Access Energy states that shared personnel should be required to keep contemporaneous logs of the time spent working for the pipeline and the affiliate. It states that such a requirement will assure that ratepayers are not subsidizing the affiliate.

The Commission is not adopting these suggestions. To require affidavits or logs would impose additional reporting burdens on the pipeline that the Commission does not believe are necessary in light of the safeguards already included in the rule to prevent affiliate abuse. The Commission will examine required reports and may conduct audits to assure that ratepayers are not subsidizing affiliate activities.

7. Tying of Services (§161.3(h))

Williams Natural Gas Company argues that this standard is not necessary for blanket certificate holders because, by the terms of their blanket certificate, they may not discriminate by providing preferential access to transportation. The Commission recognizes that the standards of conduct established in the rule may overlap some of the conditions in a pipeline's part 284 blanket certificate. The Commission, however, promulgated the standards and the reporting requirements as a method of ensuring that pipelines were meeting the non-discriminatory provisions of their blanket certificates.

8. Identification of Released Take-or-Pay Gas (§ 161.3(i))

On rehearing, the Commission has decided to eliminate this standard of conduct. The Commission considers information given to an affiliate regarding gas released by the pipeline to be "gas sales or marketing" information and therefore already included in the standard of conduct requiring contemporaneous disclosure of information provided to an affiliate.[43]

D. Reporting Requirements (§ 250.16)

The final rule also established reporting requirements to enable the Commission and the public to monitor the pipeline-affiliate relationship. These included tariff sheets setting forth: (1) A list of shared operating personnel and facilities; (2) the specific information and format required for a valid transportation request; (3) procedures to address and resolve complaints by shippers and potential shippers; and (4) procedures to inform shippers and potential shippers on the availability and pricing of transportation service, and the pipeline capacity available for transportation. The rule also required pipelines to file a transportation log of requests made by an affiliated marketer or in which an affiliated marketer was involved. Both the tariffs and the log were to be filed in FERC Form No. 592 in electronic form with a paper copy by September 12, 1988.[44] On rehearing, the Commission is requiring pipelines to respond initially within 48 hours and in writing within 30 days to a complaint filed by a shipper or potential shipper. Also, the Commission is revising the regulatory text to separate the tariff and non-tariff reporting requirements to clarify what is to be included in each.[45]

1. Tariff Filings

Columbia states that a list of operating personnel is inappropriate for a tariff filing. The Commission, however,

[40] *See, e.g.*, Hadson, Maryland People's Counsel.

[41] *See, e.g.*, Entrade Corporation.

[42] *See, e.g.*, Questar Pipeline Company, ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG), Entrade.

[43] At Enron's request the Commission is amending the regulatory text to clarify that the log information relating to gas for which take-or-pay relief is granted relates to gas transported by the pipeline. *See* revised § 250.16(b)(2)(xiii).

[44] This deadline was later extended to September 19, 1988, in order to give pipelines sufficient time to incorporate certain technical changes made in the form.

[45] At the request of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), the Commission is clarifying that the log information is not to be included in the tariff filing.

is including this list as part of the tariff so that the public will have ready access to the information. Once a pipeline submits acceptable tariff sheets with this information, it may update this information in its tariff as required in the final rule without being required to pay additional filing fees.

Enron and United argue that the procedures to address and resolve complaints should be limited to written complaints only and should be limited to complaints related to a requested or furnished service. The Commission disagrees. A pipeline should have an informal method of resolving complaints without requiring the shipper to reduce the complaint to writing. Furthermore, complaints regarding a pipeline's handling of transportation requests may not be limited to situations in which the potential shipper has requested or obtained service. For instance, it could involve a request for information prior to making a request for transportation.

2. The Transportation log

The final rule requires a pipeline to make publicly available a log of transportation service requests by affiliated marketers or in which an affiliated marketer is involved. This requirement is different from the log as proposed in the NOPR, which would have required public availability of information on both affiliate and non-affiliate requests and service.

Pipelines argue that virtually every item to be included in the log is either unnecessary to detect instances of anticompetitive conduct or would place their affiliates at a competitive disadvantage by requiring the release of commercially sensitive information.

These objections are essentially the same as those raised in response to the NOPR. The Commission in the final rule modified some of the reporting requirements to protect confidential data.[46] The Commission believes that the reporting requirements promulgated in the final rule are necessary to determine whether anticompetitive conduct is occurring. The Commission realizes that in some instances no single element may show discrimination. However, an examination of different data may show that a pattern of anticompetitive conduct is occurring. For example, a combination of the request date, the requestor's affiliation with the transporter, and the current status and disposition of the request could show whether affiliate requests are being processed sooner or are more readily approved.

[46] *See* n. 7 *supra.*

The Commission is adopting one suggestion made by several petitioners, relating to the log item that requires a pipeline to report information on the distance between the receipt and delivery point that are farthest apart in the transportation request. The rule requires that this distance be reported in pipeline miles. Several petitioners state that not all pipelines measure distance between individual points.[47]

The purpose of the distance requirement is to determine whether a correlation exists between distance and a pipeline's willingness to transport. The Commission recognizes that the method of measuring distance may vary depending on the type of pipeline system. Nevertheless, the distance between receipt and delivery points is measurable. Therefore, the Commission is deleting the requirement that this distance be reported in pipeline miles and is leaving the method of measuring this distance to the pipeline. So long as the pipeline is consistent in applying its method to each transaction, the measurements will provide a means to compare transactions on each individual system. (See revised § 250.16(b)(2)(ix))

Several petitioners state that some of the information to be included in the log may not be readily ascertainable or available to the pipeline, particularly information relating to whether gas in being sold at a loss,[48] whether gas being transported is subject to take-or-pay relief,[49] the source of the gas [50] and the maximum daily contract volume and total volume of gas to be transported.[51]

The Commission realizes that for each transportation request or service not all the information specified in the log may be available. If a particular item is unavailable that fact should be noted in the log with an explanation of why it is not included. If the information becomes available at a later date, it must be included in the log updates.

Several petitioners request clarification of certain log items.

The log requires a pipeline to file information regarding transportation requests: (1) For which transportation has commenced 30 days or more previously; (2) which have been denied; or (3) which have been pending for more than six months. Natural and others ask what is the starting date for reporting this information. The Commission is clarifying that this requirement applies to transportation service that commenced and requests that were denied after July 14, 1988 (the effective date of the rule) or that were pending for six months or more on July 14, 1988.

Tenneco asks whether the "person to be provided transportation service" in § 250.16(b)(6)(iii) is the same as the "shipper". It also asks whether both parties need to be identified where the "shipper" and the "requestor" of the transportation service are different. The Commission clarifies that the shipper is the person to whom the pipeline provides transportation service. In most circumstances the person requesting the service will be the shipper. Where the two are different, however, the pipeline should report both.

The Commission is not adopting a suggestion of United that the log information relating to released take-or-pay gas should not include take-or-pay settlements that were completed or agreed to in principle prior to September 12, 1988. United argues that this is necessary to ensure that the confidentiality of those settlements is maintained. The Commission agrees that the confidentiality or take-or-pay settlements is essential to preserving the settlement process; however, the Commission has already modified the log requirements proposed in the NOPR to prevent disclosure of competitively sensitive information relating to take-or-pay by eliminating the requirement to disclose the source of the gas. Accordingly, a pipeline need only report the producing area in which the source of gas is located, unless the pipeline has given such information to its affiliate, in which case the contemporaneous reporting requirement of the rule applies. Furthermore, information regarding whether gas is subject to take-or-pay relief will enable the Commission and the public to determine if the pipeline, through its affiliate, is giving preference to these types of transactions. The Commission recognizes the importance of a pipeline's mitigating its take-or-pay exposure but not at the cost of allowing it to engage in anticompetitive conduct to do so.

The final rule required that most of the information in the log be filed at the end of the month following the month any changes occur.[52] The regulatory

[47] Enron, INGAA, United.

[48] United, Tenneco, ANR/CIG, Enron Gas Marketing.

[49] Texas Gas Transmission, Enron.

[50] Enron states that the sources of gas of a shipper may be varied and, on a continuing basis, the particular source of the gas may change.

[51] Enron states that this information may be unavailable for: (1) contracts with evergreen provisions; (2) contracts that provide for the transportation of overrun volumes; (3) most firm contracts; and (4) interruptible service.

[52] Information on discounts in the log [§ 250.16(b)(xix)] must be filed within 15 days of the close of a pipeline's billing period.

text provided that this report satisfied a pipeline's obligation to report under § 284.13. That section requires a pipeline to maintain and make available for public inspection certain information on transportation requests. On rehearing, the Commission is deleting the statement that a pipeline's obligations under § 284.13 are met by filing the log information. The Commission is making this change because under § 284.13, a pipeline must maintain information on requests by both affiliate and nonaffiliated shippers, while the log information contains information only on affiliated shippers.

Finally, the rule required that a pipeline provide one paper copy of the log data electronically submitted to the Commission. The Commission has found that one paper copy is insufficient to verify the electronic data and for compliance and monitoring purposes. Therefore, the Commission is requiring pipelines to submit three paper copies of the electronically filed log information.

3. Public Access

The final rule requires pipelines to update the log information on a daily basis and to provide the public with 24 hour electronic access to the log information.

Several petitioners ask whether this electronic access refers to the log information that is filed with the Commission or the log as it is updated daily.[53] Others request clarification that information need be made publicly available in the log only after transportation service has begun.[54] The Commission clarifies that this access refers to the log as it is updated but that a pipeline need not provide electronic access to the information for transportation service until the transportation has begun.

United requests clarification that the log only need be updated if there are any changes. In order to assure members of the public that they are receiving the most current information, the Commission is requiring pipelines, on a daily basis, to either update the log or indicate that there have not been any changes in the log.

Pipelines argue that 24 hour access is burdensome and that access should be limited to normal business hours.[55] Enron states that the public can already get the information through the mail or by going to the pipeline's place of business.

The Commission does not believe that electronic access on a 24 hour a day basis is unduly burdensome. Moreover, any burden to the pipeline is outweighed by the need for others to access the data at their convenience rather than the convenience of the pipeline. The purpose of the requirement was to give potential competitors and the public convenient access to up-to-date information in the log. Restricting access as these petitioners suggest would not accomplish that purpose.

United states that a pipeline should be able to charge a fee to recover the costs of maintaining 24 hour access. In contrast, Access Energy argues that the Commission should expressly prohibit pipelines from charging a fee to gain access to the information.

The Commission will allow a pipeline to charge reasonable fees to access the information. Alternatively, a pipeline may contract with a commercial data distribution firm to maintain the data for public access. In that case the normal rates the firm charges will apply to those desiring electronic access.[56] The Commission may evaluate the various electronic bulletin boards as to form, costs and contents, to determine the "reasonableness" of availability and, if necessary, may adopt standards to ensure that compliance is within the spirit of the rule.

E. Civil Penalties.

Many petitioners argue as they did in response to the NOPR that the Commission has no authority to establish civil penalties. The Commission, however, explained its legal rationale for imposing these penalties in the NOPR [57] and reiterated it in the final rule. The parties on rehearing have not raised any issues of fact, law or policy that were not previously considered.

Enron requests the Commission to state that a pipeline is not in violation of the rule because a shipper has not provided it with the information necessary to comply.

The civil penalties provision of the final rule states that penalties may be assessed if the pipeline "knowingly" violates the requirements of the rule. To the extent that a pipeline is unaware that certain information has not been supplied by the shipper, then a penalty would not be appropriate. However, a pipeline that knows or should have known that required information has not been provided may not transport without becoming subject to civil penalties. Resolution of issues such as these, however, depends on the individual facts involved.

F. Selective Discounting

In the final rule the Commission restricted the ability of a pipeline that does not have a blanket certificate under subpart G of part 284 to offer transportation discounts to its affiliates. The rule prohibits a discounted rate to affiliates of these pipelines that is below the highest rate charged to a nonaffiliate.

Arkla states that the restriction impermissibly adds a condition to an already filed rate without a finding that the existing rate is unjust and unreasonable. However, the restriction on discounting does not affect a pipeline's filed rates. The pipeline may still charge a rate within the zone established in its tariff. The rule merely requires that if a discount is given to an affiliate the same discount must be given to nonaffiliates.

ANR/CIG and AGA argue that the discounting restriction was not contained in the NOPR, and therefore no notice and comment was provided as required by the Administrative Procedures Act.[58] In the NOPR, the Commission outlined a wide range of options for addressing potential abuses in the pipeline-affiliate relationship, including measures such as prohibiting a non-open access pipeline from having a marketing affiliate or prohibiting any transactions with an affiliate. These proposed options would have gone significantly further in restricting pipeline affiliate dealings than the restriction on discounting. In light of these options, restricting such a pipeline's ability to discount rates to its affiliate to no less than it is discounting to its non-affiliate is directly within the scope of the NOPR.

Access Energy suggests that pipelines be required to announce their decision on granting transportation discounts by the fifteenth of each month in order to allow independent marketers to determine their transportation rates prior to the time they have to bid on their markets. A pipeline, however, may not be in position to make a determination by this date as to whether it will grant discounts. Since the Commission is adding a new standard that requires a pipeline to make available to similarly situated shippers a discount comparable to the discount it offers to its affiliate, such marketers will be in the same position as to the availability of such discounts.

[53] *See, e.g.*, INGAA

[54] ANR/CIG, INGAA, Transco Energy Corporation.

[55] United, Columbia, and AGA.

[56] The Commission allowed these types of access charges when it required the pipeline to maintain an electronic bulletin board of transportation transactions in Panhandle Eastern Pipe Line Company, Docket No. CP86-232-008, Order No. 275-B, 42 FERC ¶ 61,076 (Jan. 27, 1988).

[57] 52 F.R. at 21,582.

[58] 5 U.S.C. §§ 552 *et seq.* (1982).

G. Affiliate Losses

Independent marketers continue to argue that a pipeline should be prohibited from taking a marketing affiliate loss in lieu of a discounted transportation rate because to the corporate whole a loss by an affiliate is the same as a discount.[59] Alternatively, Access Energy suggests that an affiliate loss should be treated and reported as if it were a discount. It adds that a pipeline should be required to keep contemporaneous records of what gas was dispatched from each receipt point for each market to enable the Commission to determine if a loss has in fact occurred.

In making these arguments the petitioners advance a scenario similar to the following. A pipeline refuses to discount its transportation rates for any shipper. Its marketing affiliate then buys gas for $1.50 per MMBtu, pays $.50 per MMBtu for the nondiscounted transportation rate and sells the transported gas for $1.90 per MMBtu, thereby losing $.10 per MMBtu. Petitioners state that this $.10 loss by the affiliate is the same to the corporate whole as if the pipeline has discounted its transportation rate by $.10. The affiliate has an advantage in providing the service in these circumstances, they argue, because an independent marketer cannot afford to provide the service at a loss while, for the marketing affiliate, this "loss" is no more than a disguised discount available only to the affiliate.

Texaco Gas Marketing raises the potential problem of where a pipeline puts into effect rates that are later found to be excessive and refunds are ordered. It argues that in these circumstances an affiliate is not averse to paying the excessive rates because the payments will go to the same corporate entity. Texaco suggests that, if refunds are later ordered, the refunds not be paid to an affiliate; instead, the amount of the refund should be credited against the rates to be collected prospectively from unaffiliated shippers.

The Commission recognizes that a marketing affiliate may not have a disincentive to engage in transactions in which it may be subject to a loss or to pay whatever rate the pipeline charges for transportation. The Commission in the final rule required pipelines to report whether an affiliate's transactions were being conducted at a loss in order to enable the Commission and potential shippers to monitor this potential for abuse. However, the Commission is not prepared to assume that the hypothetical types of occurrences cited above are occurring on a frequent enough basis to warrant generic action at this time. In fact, the data submitted by the pipelines in the transportation log indicate no circumstance in which an affiliate has sold gas at a loss. However, if the Commission determines that abuses are occurring in these types of transactions, the Commission retains its authority to fashion the appropriate remedy either in individual proceedings or through a rulemaking proceeding.

H. Sunset Date

As the Commission stated in the final rule, it would examine the need to extend the rule's reporting requirements prior to their sunset date of December 31, 1989. The Commission believes that continuation of these requirements will assist the public and Commission staff in monitoring potential abuses. Therefore, the Commission is extending these requirements for an additional year until December 31, 1990. Because the Commission cannot now determine the need to continue the reporting requirements subsequent to December 31, 1990, the Commission will again examine the need to extend the rule's reporting requirements prior to the new sunset date of December 31, 1990.

Producer Associations state that the sunset date appeared to impose a cut-off of that date on the retention of data by the pipeline. It argues that a pipeline could destroy data on the sunset date and therefore hinder on-going investigations and preclude scrutiny of pipeline conduct. To prevent this possibility, the Commission is requiring pipelines to retain the data on non-affiliate transactions until December 31, 1991. Because the log of affiliate transactions is filed with the Commission there is no need for the pipeline to retain that information. (See revised § 250.16(c))

V. Paperwork Reduction

The Office of Management and Budget's (OMB) regulations [60] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this order on rehearing are being submitted to OMB for its approval.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, DC 20426 (Attention: Michael Miller at (202) 357-9205). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

With the exception of the Commission's extension of the reporting requirements in Order No. 497, the revisions made to the final rule in this order on rehearing are effective January 22, 1990. In order to prevent a gap in the rule's reporting requirements, the amendments to § 250.16 (a), (c), and (d), which contain the sunset date for the rule's reporting requirements are effective January 1, 1990.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 161 and 250, chapter I, title 18 Code of Federal Regulations as set forth below.

By the Commission. Commissioner Moler dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 161.1 is revised to read as follows:

§ 161.1 Applicability.

This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157, and subparts B, G, H, or K of part 284 and is affiliated with a natural gas marketing or brokering entity, except a pipeline that does not conduct any

[59] Citizens Energy Corporation and Citizens Gas Supply Corporation (Citizens Energy), Access Energy, EnTrade, Natural Gas Clearinghouse.

[60] 5 CFR 1320–12 (1988).

transportation transactions with its affiliated marketer.

3. In § 161.2, the definition for "control" is revised and two new definitions, for "marketing" and "transportation," are added in alphabetical order to read as follows:

§ 161.2 Definitions.

* * * * *

Control (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

* * * * *

Marketing or "brokering" as used in this part and § 250.16 of this chapter means:

(1) A *first sale* of natural gas as that term is defined in § 270.203 of this chapter, or a sale of natural gas in interstate commerce for resale by a seller that is not an interstate pipeline, except when:

(i) The first seller is selling gas solely from its own production; or

(ii) The first seller is selling gas solely from its own gathering or processing facilities.

(2) An off-system sale by an intrastate natural gas pipeline or a sale under section 311(b) of the Natural Gas Policy Act as codified in § 284.142 of this chapter; or

(3) An off-system sale by a local distribution company or a sale under § 284.224 of this chapter.

"Marketing or Brokering" as used in this part and § 250.16 of this chapter does not include a sale by an interstate natural gas pipeline under a blanket certificate that authorizes the pipeline to make interruptible sales of surplus system supply gas.

"Transportation" as used in this part and § 250.16 of this chapter includes any transactions which provide for receipt of gas at one point and redelivery of gas to a second point, including exchanges, back-hauls and other transactions in which case the gas transported is owned, brokered or sold by the affiliates.

4. In § 161.3, paragraphs (c), (e), (f), and (i) are revised, and new paragraphs (k) and (l) are added to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(c) It may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority.

* * * * *

(e) It may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

(f) To the extent it provides to a marketing affiliate information related to transportation of natural gas, or gas sales or gas marketing it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

* * * * *

(i) If a pipeline offers a transportation discount to an affiliated marketer, it must make a comparable discount contemporaneously available to all similarly situated nonaffiliated shippers.

* * * * *

(k) A pipeline must maintain its books of account and records (as prescribed under part 201) separately from those of its affiliate.

(l) A pipeline must maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers.

PART 250—FORMS

5. The authority citation for part 250 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

6. In § 250.16, paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(6)(ix), (b)(6)(xiii), (b)(6)(xviii) and (b)(6)(xix), are revised, paragraph (b)(6)(xx) is added and paragraphs (c), (d), (e)(2), (g) and (h)(1) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* An interstate natural gas pipeline that transports natural gas for others pursuant to subparts B, G, H, or K of part 284 and is affiliated, as that term is defined in § 161.2 of this chapter, in any way with a natural gas marketing or brokering entity (except a pipeline that does not conduct any transportation transactions with its affiliated marketer) must:

(1) File the information prescribed in paragraph (b) of this section,

(2) Maintain and provide the information specified in paragraph (c) of this section, and

(3) Maintain all information required under this section from the time the information is received until December 31, 1990.

(b) *What to file.* An interstate pipeline must file the following information:

(1) New or existing tariff provisions containing the following:

(i) A complete list of operating personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company;

(ii) The specific information and format required from a shipper for a valid request for transportation service, including, for transactions in which an affiliated marketer is involved, the items of information in paragraph (b)(2) of this section;

(iii) The procedures used to address and resolve complaints by shippers and potential shippers including a provision that the pipeline will respond initially within 48 hours and in writing within 30 days to such complaints;

(iv) The procedures used by the natural gas pipeline to inform affiliated and nonaffiliated shippers and potential shippers on:

(A) The availability and pricing of transportation service; and

(B) The capacity of the pipeline available for transportation.

(2) FERC Form No. 592, consisting of a log that contains the following information on all requests for transportation service made by affiliated marketers or in which an affiliated marketer is involved for transportation that would be conducted pursuant to subpart B, G, H, or K of part 284:

* * * * *

(6) * * *

(ix) A list of all receipt and delivery points between which the gas is requested to be transported and the distance between the receipt and delivery points that are the furthest apart,

* * * * *

(xiii) Whether any of the gas being transported is subject to take-or-pay relief for the transporting pipeline and, if so, how much,

* * * * *

(xviii) Any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints,

(xix) Whether the transportation is being requested, offered or provided at discounted rates, duration of the

discount requested, offered or provided, the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and the transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point, and

(xx) Whether the pipeline has granted a waiver of a tariff provision in providing the requested service.

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1990.

(2) The information required to be maintained by this section will be available from September 12, 1988 until December 31, 1991 to:

(i) The Commission on request, and

(ii) The public under subpart D of part 385 of this chapter.

(3) The information required to be maintained by this section must be maintained on 9-track magnetic tape or computer disk. The format and specifications for maintenance of the information can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street NE., Washington, DC 20426.

(d) *When to file.* (1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until December 31, 1990. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

(2) The information required in paragraphs (b)(1) must be filed quarterly if any changes occur.

(3) The information in paragraph (b)(2) relating to transportation requests must be updated on a daily basis if any changes occur.

(4) The information in paragraph (b)(2) relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending more than six months, must be filed:

(i) For the items in paragraph (b)(2)(i) through (xviii) of this section, at the end of the month following the month any changes occur; and

(ii) For the items in paragraph (b)(2)(xix) of this section, within 15 days of the close of the pipeline's billing period. A report of a discount under this section satisfies a pipeline's obligation to report under § 284.7(d)(5)(iv) of this chapter.

(e) *How to file.* * * *

(2) The magnetic tape or computer disk must be accompanied by three paper printouts of the information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street NE., Washington, DC 20426.

* * * * *

(g) *Public access.* (1) An interstate pipeline must maintain and make available to the public all filings with the Commission under paragraph (b)(1) of this section by providing:

(i) One paper copy at the pipeline's principal place of business during regular business hours and;

(ii) Copies by mail of any item requested within seven calendar days of a written request, for which the pipeline may charge the cost of postage and fifteen cents per page photocopied or per computer printout page provided.

(2) An interstate pipeline must provide 24-hour access, by electronic means, to the data specified in paragraph (b)(2) of this section. Access to the information must be provided once the service has begun. A pipeline must, on a daily basis, either update the information or indicate that no changes have occurred in the log information.

(h) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to subparts B, G, H, or K of part 284 of this chapter and who knowingly violates the requirements of § 161.3, § 2450.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation.

* * * * *

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

Appendix

1. Access Energy Corporation
2. American Gas Association
3. ANR Pipeline Company & Colorado Interstate Gas Company
4. Arkla, Inc.
5. Association of Texas Intrastate Natural Gas Pipelines
6. Citizens Energy Corporation and Citizens Gas Supply Corporation
7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
8. Consolidated Natural Gas Company
9. Enron Gas Marketing, Inc.
10. Enron Interstate Pipelines
11. Entrade Corporation
12. Great Lakes Transmission Company
13. Hadson Gas Systems
14. High Island Offshore System
15. Industrial Energy Services Company
16. Interstate Natural Gas Association of America
17. Kentucky West Virginia Gas Company and Equitrans, Inc.
18. Laclede Gas Company (filed out of time)
19. Maryland People's Counsel
20. MidCon Marketing Corporation
21. Minnesota Department of Public Service, Energy Issues Intervention Office
22. National Fuel Supply Corporation
23. Natural Gas Clearinghouse
24. Natural Gas Pipeline Company of America
25. Northern Border Pipeline Company
26. Oxy, USA.
27. Pacific Interstate Transmission Company and Southern California Gas Company
28. Panhandle Eastern Pipeline Company and Trunkline Gas Company
29. Pelican Interstate Gas System
30. Producer Associations
31. Questar Pipeline Company
32. Sea Robin Pipeline Company
33. Shell Offshore, Inc., Shell Western E&P and Shell Gas Trading Company
34. Sonat Marketing Company
35. Stingray Pipeline Company
36. Tenneco Gas Pipeline Group
37. Texaco Gas Marketing, Inc.
38. Texas Eastern Transmission Company
39. Texas Gas Transmission Corporation
40. Trailblazer Pipeline Company
41. Transco Energy Company
42. United Gas Pipeline Company
43. Western Gas Marketing Limited
44. Williams Natural Gas Company

MOLER, Commissioner, *dissenting:*

In my view, this rehearing order unnecessarily extends the marketing affiliates rule. The original objective of the rule was to prevent undue preference on the part of a transporting pipeline on behalf of its unregulated marketing affiliate. The rule now goes beyond what is necessary to achieve that objective. It intrudes too far into the intracorporate affairs of those interstate pipeline companies that have marketing affiliates, or that have affiliates that engage in what the Commission considers to be marketing affiliate-like transactions.

I find the rule particularly troublesome in two respects. First, I would prefer to define a "marketer" in a much more limited, noninclusive way. I would focus on the unregulated marketing affiliate, and corporate transactions and communications that may give that affiliated marketer a preference. To me, an appropriate definition would include any entity (or person) that sells gas produced by others unless that entity is a pipeline or a local distribution company. Instead, under the new definition of "marketing," entities such as affiliated interstate pipelines, intrastate pipelines, and local distribution companies may be considered marketing affiliates. By broadening the types of entities and transactions that are covered by the rule, this order goes well beyond regulating a pipeline's transactions with its unregulated marketing affiliate. It now impinges on the whole range of intracorporate relationships.

My second concern is with the contemporaneous disclosure requirement under § 161.3(f). This order concludes that this standard of conduct applies with respect to *any* employee or officer that is shared by the pipeline and its marketing affiliate. The preamble includes an example of a transaction that would trigger the contemporaneous disclosure requirement:

> For example, if a pipeline and its parent company decide to embark on a new gas transportation program, and one of the officers of the parent is also an officer of the affiliated marketer, the pipeline has shared the information with the affiliated marketer by virtue of the fact that the officer of the parent company (who is also an officer of the affiliated marketer) knows of it.[1]

At a minimum, to prevent a violation, senior corporate officers will now have to post on the electronic bulletin board almost any information to which they are privy. As a practical matter, the rule could well require separation of employees.

While I am supportive of the effort to establish reasonable standards of conduct and reporting requirements to reduce the potential for abuse practices, I believe this rule as now designed is overly broad and intrusive. Thus, I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 89-29730 Filed 12-21-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Slip op. at 25.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 570, 577, 578, 840, and 841

[Docket No. R-89-1433; FR-2581-X-05]

RIN 2506-AA98

Supportive Housing Demonstration Program, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Final rule; Announcement of effective date and OMB control number.

SUMMARY: This document announces the effective date for a recently published final rule that implemented amendments to the Supportive Housing Demonstration Program made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on Congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, certain sections of the Department's regulation contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 8, 1989 (54 FR 47024), is December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers listed.

List of Subjects in 24 CFR Parts 570, 577, 578, 840, and 841

Reporting and recordkeeping requirements.

Accordingly, parts 577 and 578 of title 24 of the Code of Federal Regulations are amended as follows:

PART 577—TRANSITIONAL HOUSING

1. The authority citation for part 577 continues to read as follows:

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 577.210 and 577.220 [Amended]

2. Sections 577.210 and 577.220 are amended by revising the OMB control numbers at the end of each section to read as follows:

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112).

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

3. The authority citation for part 578 continues to read as follows:

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 578.210 and 578.220 [Amended]

4. Sections 578.210 and 578.220 are amended by revising the OMB control numbers at the end of each section to read as follows:

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112).

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-29719 Filed 12-21-89; 8:45 am]

BILLING CODE 4210-29-M

24 CFR Part 511

[Docket No. R-89-1441; FR-2558-X-03]

RIN 2506-AA88

Rental Rehabilitation Grants, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Final rule; Announcement of effective date and OMB control number.

SUMMARY: This document announces the effective date for a recently published final rule that implemented sections 150(b) and 150(f) of the Housing and Community Development Act of 1987 (the 1987 Act). Section 150(b) amended the United States Housing Act of 1937 (the 1937 Act) to make eligible for immediate rental rehabilitation grant assistance, publicly owned real property that will be privately owned upon completion of rehabilitation. Section 150(f) was intended to clarify when nonprofit corporations are considered eligible to own rental rehabilitation grant-assisted projects.

The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on Congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the day after the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, §§ 511.10(g)(3)(i)(A) and 511.10(c)(4) of the rule contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 15, 1989 (54 FR 47654), is December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory section listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers listed.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs: Housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, part 511 of title 24 of the Code of Federal Regulations is amended as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for part 511 continues to read as follows:

Authority: Sec. 17, United States Housing Act of 1937, (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 511.10 [Amended]

2. Section 511.10 is amended by adding at the end of the section, the following statement:

(Approved by the Office of Management and Budget under OMB Control Number 2506-0110)

Dated: December 18, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-29746 Filed 12-21-89; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 812 and 882

[Docket No. R-89-1432; FR-2539-X-04]

RIN 2502-AE62

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; Announcement of effective date.

SUMMARY: This document announces the effective date for a recently published final rule that implemented section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988), which authorized the section 8 Moderate Rehabilitation Assistance Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals. The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, certain sections of the Department's regulation contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control numbers at the places where current

information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 7, 1989 (54 FR 46828), is December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory section listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control numbers listed.

List of Subjects in 24 CFR Parts 812 and 882

Reporting and recordkeeping requirements.

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89–29722 Filed 12–21–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 290

RIN 1010–AB39

Appeals Procedures

AGENCY: Minerals Management Service, Interior

ACTION: Final rule.

SUMMARY: This final rule establishes the policy of the Minerals Management Service (MMS) relative to the timely filing of appeals under 30 CFR part 290. The final rule requires the filing of an appeal within 30 days after receipt of the order or decision being appealed, but allows for a grace period if the appeal is received within the following 10 days and there is evidence that the notice of appeal was sent prior to the end of the initial 30 days. While it could be argued that the current system has merit, MMS now believes that it is in the public interest to provide a more accommodating system for the timely filing of appeals.

DATES: This final rule is effective January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Jane Roberts, Division of Appeals (MS623), Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817. Telephone: (703) 787–1275 or (FTS) 393–1275.

SUPPLEMENTARY INFORMATION: The regulations at 30 CFR part 290 pertain to the procedures of MMS for the filing of appeals to the Director (or to Assistant Secretary—Indian Affairs when Indian lands are involved). Under the existing rule, the notice of appeal must be filed in the office of the official issuing the order or decision within 30 days from service of the order or decision. The 30-day period is counted from the date on the U.S. Postal Service's return receipt card, which indicates receipt of the order or decision by the Appellant. The MMS has been strict in its evaluation of timeliness, a policy that has been consistently upheld by the Interior Board of Land Appeals (IBLA). If more than 30 days has elapsed between the date on the return receipt card and the date of the receipt by MMS stamped on the notice of appeal, then the appeal was dismissed as untimely.

While it could be argued that the current system has merit, MMS now believes that it is in the public interest to provide a more accommodating system for the timely filing of appeals.

The majority of all appeals concern the collection of royalties due to the Government. The MMS's Royalty Management Program (RMP), is responsible for royalty collection. The appeals process is a forum for the correction of error and clarification of policy in royalty collection. Such issues cannot be brought forward unless appeals are addressed on their merits. A short grace period allows more appeals to be considered on their merits, thereby enhancing the quality of the royalty collection activities without creating an administrative obstacle. On average, 500 appeals are filed in a year. Of those, approximately 9 percent, or 45 appeals are dismissed as untimely under the current rule. A review of past appeals indicates that 75 percent or 34 appeals, would have been timely had this final rule been in effect.

This rule establishes a grace period if an appeal is filed within 10 days of the initial due date and there is evidence that the appeal was transmitted prior to the end of the initial 30-day period. Such evidence could be a postmark or date of receipt by a private delivery service during the 30-day period.

Allowance of a grace period is not without precedent. Other governmental entities including the Internal Revenue Service and the IBLA use such a system. The IBLA, the forum most closely related to the MMS appeal process, allows a grace period in its regulations at 43 CFR 4.401 and 4.411. While the existing MMS system has a long tradition and is clear, unambiguous, and administratively easy, it can lead to the dismissal of a valid appeal due to mail or messenger mischance. Such circumstances should not be determinative of the consideration of the merits of an appeal.

Because this action is a matter of Agency practice and procedure, prior notice and comment are not deemed necessary under the Administrative Procedure Act, 5 U.S.C. 553(b) (1982).

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment, therefore, a detailed statement is not required, under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C) (1982).

The DOI has determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. Based on an analysis of appeals filed in 1987, the economic effect of providing a grace period is expected to be less than $100 million or an estimated $1,096,500.00.

The DOI also certifies that the rule will not have a significant economic effect on a substantial number of small entities and because the rule provides easier access to the MMS appeals process, it could have an economic benefit on all-sized entities. Therefore, the rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601–612 (1982).

The DOI certifies that the rule does not represent a Government action capable of interfering with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action In Interference with Constitutionally Protected Property Rights.

There are no information collection requirements contained in 30 CFR part 290 which require approval by the Office

of Management and Budget under 44 U.S.C. 3501–3520 (1982).

List of Subjects in 30 CFR Part 290

Administrative practice and procedure.

Dated: October 26, 1989.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set out in the preamble to this rule, part 290 of title 30 of the Code of Federal Regulations is amended as set forth below.

PART 290—[AMENDED]

1. The authority citation for part 290 is revised to read as follows:

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 30 U.S.C. 359; sec. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023; 30 U.S.C. 1751.

2. Section 290.3 is amended to redesignate paragraph (a) as paragraph (a)(1) and a new paragraph (a)(2) is added to read as follows:

§ 290.3 Appeals to Director.

(a) * * *

(2) No extension of time will be granted for filing the notice of appeal. If the notice is filed after the grace period provided in § 290.5(b) of this title and the delay in filing is not waived, as provided by that section, the notice of appeal will not be considered and the case will be closed.

* * * * *

3. Section 290.5 is revised to redesignate the existing paragraph as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 290.5 Time limitations.

* * * * *

(b) A notice of appeal must be filed within the time provided in § 290.3 of this title. If the notice of appeal is not received in the proper office within that time, the delay in filing will be waived if the notice of appeal is filed not later than 10 days after it was required to be filed and it is determined that the notice of appeal was transmitted to the proper office before the end of the time required for filing in § 290.3(a)(1) of this title. Determinations under this paragraph shall be made by the officer with whom the notice of appeal is required to be filed.

[FR Doc. 89–29791 Filed 12–21–89; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89–06]

Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Seattle (City), the Coast Guard is changing the regulations governing operation of the Montlake Bridge across the Lake Washington Ship Canal, mile 5.4, at Seattle, Washington. This change is being made because peak levels of afternoon vehicular traffic have increased. Surveys conducted by the City and the results of a trial regulation indicate that this action will receive vehicular traffic congestion attributable to openings of the Montlake Bridge and still provide for the reasonable needs of navigation. The change extends the weekday afternoon closed period by one half hour (3:30 p.m. to 6 p.m. instead of the present 4 p.m. to 6 p.m.) and allows openings only on the hour and half hour Monday through Friday, from 12:30 p.m. to 3:30 p.m. and from 6:00 p.m. to 6:30 p.m.

EFFECTIVE DATE: These regulations become effective on December 22, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: On June 8, 1989, the Coast Guard published temporary rules with a request for comments (54 FR 24555) to be effective for 60 days and to be used to evaluate the impacts of the proposed regulation change. Based upon the general acceptance and limited impacts of the temporary rules, the Coast Guard, on October 13, 1989, published proposed rules (54 FR 41991) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated November 7, 1989. Interested parties were given until December 7, 1989 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of Comments

We received a total of ten comments concerning the temporary and proposed change: five from recreational boaters, four from concerned citizens, and one from a federal government agency. The boaters objected to the change, the concerned citizens were generally in favor of the change, and the governmental agency had no objection to the change. The primary concern of the boaters was the danger of waiting for bridge openings while maneuvering within the Montlake Cut. As the trial period progressed, most boaters either planned their trips to arrive at the scheduled opening time, or waited outside the Montlake Cut until it was time for an opening. Citizen comments were supportive of the change, but two wanted additional restrictions on bridge openings. We have carefully considered the comments and believe that the concerns of safety and inconvenience raised by the boaters have been minimized through experience with the new procedure gained during the trial period, and the additional restrictions in bridge openings requested by the citizens are not warranted at this time. Therefore, in the absence of significant objection to the proposal as published (54 FR 41991) on October 13, 1989, the final rule is unchanged from the proposed rule, except for minor editorial changes to enhance clarity.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that with minimal advance planning vessel operators who routinely require bridge openings should experience little or no delay.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will

not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.1051 is amended by revising the introductory text of paragraph (d), and paragraph (e) to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard Bridge, mile 1.1, Fremont Bridge, mile 2.6, and University Bridge, mile 4.3, shall open on signal, except that:

* * * * *

(e) The draw of the Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draw need not open for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draw shall open without delay, when requested by vessels engaged in towing operations.

(2) For any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over, from Monday through Friday, except Federal Holidays:

(i) The draw need not open from 7 a.m. to 9 a.m. and 3:30 p.m. to 6:30 p.m.

(ii) The draw need open only on the hour and half hour from 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m.

(3) Between the hours of 11 p.m. and 7 a.m. the draw shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Bridge.

Dated: December 13, 1989.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 89–29753 Filed 12–21–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3699–5]

Approval and Promulgation of Air Quality Implementation Plans, Connecticut; Reasonably Available Control Technology for Uniroyal Chemical Company, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was originally approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective February 20, 1990, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On September 8, 1989, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 8009 which the State of Connecticut issued to Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on certain processes at Uniroyal as required by subsection 22a–174–20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a–174–20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8009 and has determined that the level of control required by this Order represents RACT for the operations at Uniroyal covered by the State Order. Uniroyal is a chemical manufacturing facility located in Naugatuck, Connecticut. As RACT for the processes subject to subsection 22a–174–20(ee), the State Order requires Uniroyal to install air pollution control equipment on any VOC emission source at its Naugatuck facility with maximum potential VOC emissions in excess of forty pounds per day. Each new piece of air pollution control equipment, except surface condensers and surface condenser/secondary control equipment combinations on any process vent, is required to demonstrate a minimum overall VOC reduction of eighty-five percent. Control equipment currently in operation must also meet a minmum overall VOC reduction of eighty-five percent. Surface condensers and surface condenser/secondary control equipment combinations on any process vent are required to demonstrate a minimum overall VOC reduction of ninety-five percent.

All pollution abatement equipment is also subject to an operation and maintenance program that is part of the State Order. This program requires Uniroyal to operate and monitor its control equipment in a prescribed manner. It also requires Uniroyal to perform certain preventive maintenance

at prescribed intervals depending on the type of pollution control equipment.

The State Order exempts any source at Uniroyal's facility which emits less than forty pounds of VOC per day from any RACT requirements. This exemption is consistent with the provisions of subsection 22a–174–20(aa) of Connecticut's regulations which was approved by EPA on October 1, 1984 (49 FR 41026). For purposes of determining which of the facility's sources are exempt from meeting RACT, Uniroyal must aggregate similar or identical VOC emission points. For each source that is exempt from meeting RACT, the DEP has imposed an enforceable daily cap of forty pounds VOC per day. Furthermore, the DEP has imposed daily and annual emission caps on each process equipment group that is used in manufacturing.

Part VIII(A)(4) of the Compliance Timetable incorporated into the Order provides that any new, less restrictive emission limit on an existing process resulting from a process change, or any new emission limit on any new process will be incorporated into Appendix D of the Order. For the new, less restrictive emission limits on existing processes, EPA will have to approve these into the SIP before Uniroyal may use them to comply with federal law. These new limits will be minor adjustments affecting a few processes among Uniroyal's hundreds of emission points.

State Order No. 8009 also requires Uniroyal to implement a fugitive leak detection program. This program will reduce VOC leaks from pumps, valves (process), compressor seals, safety relief valves, pipe connectors (flanges), agitator seals, valves (open-ended), and sampling connections at Uniroyal.

The State Order also imposes requirements on any boiler used to destroy waste VOC. The Connecticut DEP has determined that RACT for any boiler at Uniroyal which burns waste VOC to be the following operational requirements: (1) the boiler must maintain a minimum of fifty percent of the fuel fired as oil, natural gas or derivations of these; (2) the boiler load must be no less than twenty-five percent of maximum design heat input while burning any waste VOC; (3) any waste VOC burned must have an as-fired heat input of not less than 8,000 BTU per pound; (4) any waste VOC to be burned will be fired directly into the flame zone with an air or steam atomization system; and (5) the boiler burning waste VOC must be operated with a functioning system that automatically cuts off the waste VOC feed when specific time-weighted average CO emission limits are exceeded.

The Order requires that Uniroyal have complied with these requirements by December 31, 1987, which is the final compliance date allowed in subsection 22a–174–20(ee) of Connecticut's regulations.

EPA has reviewed State Order No. 8009 and has determined that the level of control required by this Order represents RACT for Uniroyal.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on February 20, 1990.

Final Action: EPA is approving Connecticut State Order No. 8009 as a revision to the Connecticut SIP. The provisions of State Order No. 8009 define and impose RACT on Uniroyal to control VOC emissions as required by subsection 22a–174–20(ee) of Connecticut's regulations.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 19, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

Subpart H, of part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.370 is amended by adding paragraph (c)(53) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 8, 1989.

(i) *Incorporation by reference.* (A) Letter from the Connecticut Department of Environmental Protection dated September 8, 1989 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8009 and attached Compliance Timetable, Appendix A, Appendix B, and Appendix C for Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. State Order No. 8009 was effective on September 5, 1989.

(ii) *Additional materials.* (A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 89–29770 Filed 12–21–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL 3699-2]

Idaho; Final and Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Idaho for final and interim authorization, public hearing, and public comment period.

SUMMARY: Idaho has applied for final authorization of its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), including a request for interim authorization for the corrective action provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). The U.S. Environmental Protection Agency (EPA) has reviewed Idaho's application and has made the tentative decision, subject to public review and comment, that Idaho's hazardous waste program effective as of July 8, 1988, satisfies all of the requirements necessary to qualify for authorization as requested. Thus, EPA intends to grant final authorization—for RCRA base program as well as for other federal provisions in effect as of July 1, 1987, and for interim authorization of HSWA corrective action provisions Section 3004(u) of HSWA—to the State of Idaho to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Idaho's application for authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if public interest is expressed.

DATES: A public hearing is scheduled for January 24, 1990, at 7:00 p.m., in the Supreme Court Building, Basement Conference Room, 451 West State Street, Boise, Idaho. Idaho will participate in the public hearing held by EPA on this subject. All comments on Idaho's final authorization application must be received by the close of business on January 26, 1990. EPA reserves the right to cancel the public hearing if written interest in holding a hearing is not received by EPA by January 11, 1990. Those wishing to testify at such hearing are asked to submit a written request to EPA by January 11, 1990. To find out whether a public hearing will be held, contact Nina Kocourek, EPA, (206) 442-6502 by January 13, 1990.

ADDRESSES: Copies of Idaho's program application are available 8:00 a.m. to 4:30 p.m., Monday through Friday, at the following addresses for inspection and copying: Idaho Department of Health and Welfare, Hazardous Materials Bureau, 450 West State St., Boise, Idaho 83720, (208) 334-5879; U.S. EPA Headquarters Library, PM 211A, 401 M St. SW., Washington, DC 20460, (202) 382-5926; U.S. EPA, Region 10 Library, 1200 Sixth Ave., Seattle, Washington 98101, (206) 442-1259. Written comments, request for hearing, and request to testify at hearing should be sent to Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101, (206) 442-6502.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101, (206) 442-6502.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6926 et seq., allows EPA to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616. Final authorization is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement authority (section 3006(b); 42 U.S.C. 6926(b)). States applying for authorization must demonstrate a program equivalent to the Federal program in effect one year prior to the date the application is submitted. Interim authorization is a temporary authorization which a state can request and which is granted if the state requirements are substantially equivalent to the federal program requirement. (Section 3006(g)(2), 42 U.S.C. 6926(g)(2)). All interim authorizations pursuant to section 3006(g)(2) expire on January 1, 1993. Responsibility for that portion of the program reverts to EPA on that date if a state has not received final authorization for those provisions.

EPA plans to codify the State's program in 40 CFR Part 272, Subpart N, in an Immediate Final Rule, if and when a Final Determination to grant authorization is published in the Federal Register.

B. Idaho

Idaho has not previously applied for authorization of any part of the Federal program under RCRA. On July 7, 1988, Idaho submitted its official application for final authorization for those requirements promulgated as of July 7, 1987 under RCRA and HSWA. On November 17, 1989, the state requested interim authorization for the HSWA corrective action provisions of section 3004(u), promulgated as of July 7, 1987. The State incorporated by reference all Regulations in 40 CFR parts 124, 260-266, 268, and 270 that were in effect and codified as of July 1, 1987. No changes were made to the federal RCRA program as of July 1, 1987 and before July 8, 1987. The State is not seeking authorization at this time for any changes made to the Federal program after July 7, 1987.

Prior to its submission, Idaho solicited public comment and held a public hearing on its draft application. EPA has reviewed Idaho's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for interim and final authorization as described above. Consequently, EPA intends to grant interim and final authorization to Idaho to operate its program, subject to EPA's retention of authority under sections 3007, 3008, 3013, and 7003 of RCRA, as amended by HSWA.

During EPA's review of Idaho's application a question arose concerning the scope of Idaho's regulatory exclusion for farmers. EPA excludes from virtually all hazardous waste regulation "farmers" who dispose of waste pesticides from their own use, provided that the disposal meets specified standards. See e.g., 40 CFR 264.1(g)(4). Idaho's exclusion specifies that both "farmers" and "ranchers" are exempt. Since EPA has not previously interpreted the term "farmer" in this exclusion, it must address this issue to act on Idaho's application. EPA notes first that the dictionary definitions of "farm" and "ranch" substantially overlap. Also, EPA believes that the usage of the terms varies from region to region, so that agricultural operations that might be called "farms" in the eastern U.S. could be called "ranches" in the West. Further, EPA sees no strong policy reasons for trying to distinguish between these two subcategories of agricultural operations. Accordingly, EPA has tentatively determined to interpret "farmer", as used in EPA's RCRA regulatory exclusion, to include both "farmers" and "ranchers", and to approve this aspect of Idaho's

application. EPA solicits comments on these issues.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on January 24, 1990 at 7:00 p.m. in the Supreme Court Building, Basement Conference Room, 451 West State Street, Boise, Idaho. The public may submit written comments on EPA's tentative determination for Idaho's final authorization until January 26, 1990. Copies of Idaho's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing and during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Idaho. EPA expects to make a final decision on whether or not to approve Idaho's program by March 22, 1990 and will give notice of this decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments. Idaho is not seeking authority over any Indian lands; this authority will remain with EPA.

C. Effect of HSWA on Idaho's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the state is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Idaho if RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State Program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Idaho until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's tentative determination includes final authorization for HSWA provisions effective through July 7, 1987, except for corrective action provisions of HSWA effective through July 7, 1987 for which interim authorization is sought. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 CFR 28702–28755, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 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 Idaho's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It dose not impose any new burden on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Lists 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 section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 7, 1989.

Robert S. Burd,

Acting Regional Administrator.

[FR Doc. 89–29742 Filed 12–21–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–494; FCC 89–307]

Broadcast Services; Enforcement of Prohibitions Against Broadcast Indecency

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission solicits comment regarding the validity of a recent 24-hour Congressional ban on the broadcast of indecent material. This action is taken in response to a remand of the record by the U.S. Court of Appeals for the D.C. Circuit in *Action for Children's Television* v. *FCC*. The Commission sought and was granted the remand in order to develop an evidentiary record regarding the broadcast of indecent material. The instant Notice fulfills the Commission's commitment to the court "to promptly collect data relevant to a judicial determination of the validity of a total ban on broadcast indecency."

DATES: Comments are due by January 19, 1990, and reply comments are due by February 16, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry (Notice) in MM Docket No. 89–494, adopted October 26, 1989, and released November 20, 1989. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Inquiry

1. In response to a remand of the record by the U.S. Court of Appeals for the D.C. Circuit in *Action for Children's Television* v. *FCC*, No. 88–1916 (D.C. Cir. Sept. 13, 1989) (ACT II), the Commission in this Notice, solicits data and comment relevant to the validity of a recent 24-hour ban on the broadcast of indecent material.

Background

2. In the Commission's 1989 appropriations bill, Congress directed the Agency to "promulgate" regulations before January 31, 1989, aimed at enforcing the restrictions on broadcast indecency in Section 1464, 18 U.S.C. 1464, on a 24-hour per day basis. In response, on December 19, 1988, the Commission adopted a new rule prohibiting broadcast indecency and obscenity on a 24-hour basis (53 FR 52425, December 28, 1988). A number of petitioners filed suit challenging the rule in ACT II, and on January 23, 1989, the court stayed the implementation of the rule pending judicial review.

3. Before briefing and oral argument on the merits in ACT II, the Supreme Court declared unconstitutional a ban on the telephone transmission of indecent messages in *Sable Communications of California, Inc.* v. *FCC*, 109 S. Ct. 2829 (1989)(Sable). While the Court did not rule on the applicability of its holding to the broadcast of indecent material, Justice Scalia suggested, in dicta, that indecent broadcasts can be totally banned if "data [can] be found demonstrating the infeasibility of alternate means to provide * * * adequate protection of minors." In order to develop such an evidentiary record regarding broadcast indecency, the Commission obtained a remand of the record in ACT II and now initiates this proceeding.

Definition of Indecency

4. For the purpose of this inquiry, the Commission asks that parties premise their comments on its current definition of broadcast indecency—language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. Such broadcasts are actionable when there is a reasonable risk that children may be in the audience. This definition has been affirmed by the Supreme Court, has survived vagueness and overbreadth challenges in the DC Circuit, and was impliedly relied upon by Congress in directing the Commission to enforce Section 1464 on a 24-hour basis. If any commenters believe that the Commission should redefine indecency or modify its application of the present definition for the purpose of enforcing a 24-hour ban, they should state their proposed definition and explain why it is preferable to the Commission's current definition.

Protection of Children

5. Congress imposed the 24-hour ban on indecent broadcasts "to protect the American people, especially children * * *." Accordingly, this inquiry focuses on Congress' primary interest in protecting children. The Notice solicits comment on whether a 24-hour ban on broadcast indecency advances the compelling government interests in protecting children from exposure to indecent material (*see*, e.g., Sable, 109 S. Ct. at 2836), and in assisting parents in supervising their children (*see*, e.g., *Ginsberg* v. *New York*, 390 U.S. 629, 639 (1968)).

6. As a preliminary matter, the Notice raises the issue of the appropriate age group to which the government's interest in protecting children should extend. The Commission tentatively concludes that children ages 12 to 17 should be included within the scope of this inquiry, and asks commenters to assume that the term "children" includes all children ages 17 and under in supplying information for the proceeding. Notwithstanding this conclusion, the Commission invites comment on the age group to which the government's interest in protecting children should extend.

7. In developing a record on the validity of a total ban, the Commission seeks comment and data on numerous issues which fall into three general areas of concern: (1) children's access to the broadcast media as well as their actual viewing and listening habits; (2) the feasibility of alternative means of restricting children's access to indecent broadcasts; and (3) the availability of indecent material for adults through non-broadcast means. The *Notice* presents, and requests comment on, data and preliminary findings on some of these issues.

8. *Children's Access/Viewing and Listening Habits.* In *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court recognized two significant aspects of broadcasting: Its "uniquely pervasive presence in the lives of all Americans," and its unique accessibility to children, even those too young to read. Congress, in enacting the 24-hour ban also expressed concern about the pervasiveness and accessibility of the broadcast media. Therefore, the Commission seeks to develop a factual record regarding these qualities of broadcasting, particularly with respect to whether they support a total ban on indecent broadcasting. The Commission also solicits information on children's listening and viewing habits, particularly with respect to whether there is a reasonable risk that children will be in the broadcast audience at all times of the day or night. The Commission urges parties to consider the impact and relevance of such variables as market size, time of year, and time zone on viewing and listening habits.

10. *Alternatives to 24-Hour Ban.* Secondly, the Commission solicits comment on alternatives to the 24-hour ban on indecency, including: (1) Channeling indecent broadcasts to a time of day when children most likely will not be exposed to them, including reliance on parental supervision to protect children; (2) program rating codes or pre-broadcast warning devices; and (3) feasible technologies that can be used to keep indecent broadcasts from children. This Commission notes that it was unable to locate data on listening habits of children under 12, on viewing habits by age between 1:00 a.m. and 6:00 a.m., and on parental supervision of children's nighttime listening and viewing, and specifically asks for such data. The Commission requests that any parties asserting that time channeling and parental supervision are feasible alternatives to a 24-hour ban submit the evidence on which they rely to support that conclusion.

13. Another possible alternative to the 24-hour ban is the use of a voluntary industry rating code, similar to the Motion Picture Association of America (MPAA) code, for television and radio broadcasts. The ratings could be published in television and radio guides, and announced prior to each program. There is a question, however, as to whether such codes and prior warnings would be effective mechanisms to protect minors from indecent programming, particularly given the existence and use of remote control and scanning devices. The Commission requests comment and data on the effectiveness of ratings and prior warnings as an alternative to the 24-hour ban on indecent broadcasts. The Commission notes that the effectiveness of this alternative is also integrally related to parents' ability and willingness to supervise their children's viewing and listening, and requests parties to consider these factors in commenting on this alternative.

14. Finally, the Commission seeks comment on whether there are any

feasible broadcast technologies that can provide an alternative to the 24-hour ban on indecent broadcasts. One type of technology that might be considered is the use of an FM or TV aural subcarrier, such as Television's "Second Audio Program" channel for the broadcast of indecent material. Use of such a technology, which requires decoder devices to gain access to the programming, could restrict children's access to indecent broadcasts, while at the same time make such broadcasts available to adults. The effectiveness of such a technology as an alternative to a 24-hour ban, depends upon whether it could, in fact, restrict minors' access to indecent material, or whether, for example, decoder devices would become standard features on radio and television receivers making such programming easily accessible to minors.

15. *Availability of Non-Broadcast Alternatives for Indecent Material.* Even if the evidence on children's viewing and listening ultimately supports a total ban on broadcast indecency rather than time channeling or other more limited means of regulation, the Commission must also address whether a 24-hour ban impermissibly infringes upon adults' First Amendment rights by permitting them to hear and view only what is acceptable to children. In view of this concern, the Commission requests comment on whether non-broadcast alternatives, including cable with a lock-box capacity, videocassettes, audiocassettes, records, motion pictures, theatres, and nightclubs, provide adults with sufficient access to visual and audio indecency. Do the costs associated with each alternative reduce its practical availability to adults? Are there differences in the types of alternatives available for video versus audio indecency?

Procedural Matters

16. Because the ACT II court will rely on the record in this proceeding in making its decision, the Commission's goal is to develop as complete a record as possible. Accordingly, the Commission asks parties to address all issues thoroughly and, wherever possible, to support their statements with statistical data. The Commission also requests that parties submitting statistical studies or analysis indicate the factual basis for and methodology of such studies in their submissions. Individual reports, articles, and other data referred to in the Notice are available in the docket of this proceeding in order to enable parties to provide comments on this specific material. Data referred to throughout this synopsis is presented in the full text of the Notice and in Appendices B and C.

Comment Information

17. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 19, 1990, and reply comments on or before February 16, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-29767 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-9273]

RIN 0648-AC79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This final rule will implement Amendment 3 (Amendment) to the FMP. It will enable the New England Fishery Management Council (Council), its Multispecies Committee, NMFS, and other management agencies to respond in a timely manner to protect large concentrations of juvenile, sublegal, and spawning fish through a Flexible Area Action System. The intended effect of the rule is to: (1) Enhance age-at-entry controls; (2) eliminate the need for emergency actions; and (3) enable management agencies to respond to requests from the fishing industry for timely action.

EFFECTIVE DATE: December 19, 1989.

ADDRESSES: Copies of the Amendment, Environmental Assessment, Regulatory Impact Review (RIR), and other supporting documents are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, (Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared by the Council under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended (16 U.S.C. 1801 *et seq*). A notice of availability was published on August 30, 1989 (54 FR 35908) and the proposed rule on October 2, 1989 (54 FR 40466).

Amendment 3 establishes a Flexible Area Action System (FAAS) that will provide protection for large concentrations of juvenile, sublegal, or spawning multispecies finfish. The Chairman of the Council's Multispecies Committee would initiate a 26-day administrative process if warranted by reports. The FAAS includes industry involvement and initiation by calling attention to a problem, a formal notice of intended action, verification by the Director, Northeast Region, NMFS (Regional Director), the preparation of an impact analysis for each occurrence, and a requirement for public inspection and comment before any action is taken.

Comments and Responses

Written comments were received from the New England Fishery Management Council and the Conservation Law Foundation of New England, Inc.

Comment: The Council provided comment which requested that implementation of the Amendment be done as soon as possible in order to protect concentrations of sublegal yellowtail flounder occurring in Southern New England waters.

Response: Due to the large concentrations of sublegal yellowtail flounder presently occurring in Southern New England and in light of the emergency action taken last year, the Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary), has determined that it is in the best interest of the resource and the public to waive the Administrative Procedure Act delayed effectiveness period for this Amendment.

Comment: The Conservation Law Foundation submitted comments that strongly supported implementation of the amendment. It also suggested three specific changes to the rule in order to make the FAAS more responsive by accelerating the schedule when possible.

Response: One of these comments would have denied the public an adequate opportunity to review the reports required by § 653.26(c)(1) and (d). The other two comments are incorporated into the final regulations and explained by the changes below.

Changes From the Proposed Rule

In response to comments received the following changes are made from the proposed rule.

In § 651.26(b) the sentence "Day 1 is designated when the notice is published in the **Federal Register.**" is changed to "Day 1 is designated when the notice is filed with the Office of the Federal Register."

In § 651.26(e) the phrase "On Day 21" is changed to "By Day 21" and § 651.26(b)(4) is similarly changed.

Classification

The Regional Director determined that this Amendment is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 3. Based on this EA, the Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment and finding of no significant impact from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on the regulatory impact review which demonstrates positive long-term economic benefits to the fishery under these management measures.

The present high concentrations of juvenile or sublegal yellowtail flounder in the Southern New England/Mid-Atlantic Region will result in high discards with associated high mortality. For this reason, the Under Secretary has found that there is good cause to implement this rule immediately and waive the delayed effectiveness period under section 553(d) of the Administrative Procedure Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. The final rule establishes an administrative procedure for prescribing management measures to protect concentrations of juvenile, sublegal, and spawning multispecies finfish and does not initially impose specific management measures. Any management measure subsequently adopted under this procedure will be analyzed for its impact on small entities.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act. All states with the exception of Virginia and Maryland have agreed with the Council's determination. Virginia and Maryland did not comment within the statutory time period, and therefore, consistency is automatically implied.

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 Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: December 18, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR part 651 continues to read as follows:

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

2. Section 651.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 651.2 Definitions.

* * * * *

Chairman means the Chairman of the Multispecies Finfish Committee of the Council.

* * * * *

Committee means the Multispecies Finfish Committee of the Council.

Council means the New England Fishery Management Council.

* * * * *

3. 50 CFR part 651 is amended by adding a new § 651.26 to read as follows:

§ 651.26 Flexible Area Action System.

(a) The Chairman of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chairman will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he determines it is necessary, the Chairman will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chairman will request the Regional Director to publish a notice in the **Federal Register.** The request must include a complete draft of the notice. The Secretary must file the notice within one business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notice will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chairman's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action which may be taken, limited to the various management measures currently implemented by the FMP;

(12) The Council's initiation of analysis of the impacts; and

(13) The date (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14 the following activities will take place:

(1) The Regional Director shall prepare a fact finding report which will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from State agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS's capabilities for administering, monitoring, and enforcing any of the proposed options.

(2) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

(e) By Day 21, provided that it is six days after release of the fact finding report required by paragraphs (c) (1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure but already contained within and implemented by the FMP;

(2) Between three weeks and six months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities.

If the Committee recommends that action is not warranted, and the Regional Director concurs, notice will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the Committee's decision.

(f) By Day 23 the Regional Director shall: (a) Accept the Committee's recommended management action; or (b) reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notice in the **Federal Register** to be filed by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal Fisheries Permits for Northeast Multispecies Finfish. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report and the public comments, are no longer in existence, he will terminate the action by notice in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the **Federal Register**. The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day which is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c) (1) and (d) of this section have been made available for public review.

[FR Doc. 89-29741 Filed 12-19-89; 8:55 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

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.

RESOLUTION TRUST CORPORATION

12 CFR Part 1605

RIN 3205-AA00

Employee Responsibilities and Conduct

AGENCY: Resolution Trust Corporation.

ACTION: Proposed rule.

SUMMARY: The Resolution Trust Corporation ("RTC") is issuing for public comment its proposed rules and regulations, 12 CFR part 1605, which prescribe standards of ethical and other conduct for RTC employees, in implementation of the provisions of section 21A(p)(2) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73 (103 Stat. 363).

DATE: Comments must be received on or before January 22, 1990.

ADDRESSES: Comments should be addressed to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 at the same address on business days between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), Office of the Executive Secretary, (202) 898–7272, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 21A(b) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101.73; 103 Stat. 363), established the RTC as an instrumentality of the United States and charged it with the duty, among others, of carrying out a program, under the general oversight of the Oversight Board and through the Federal Deposit Insurance Corporation (the "FDIC"), of managing and resolving all cases involving savings associations the accounts of which were previously insured by the Federal Savings and Loan Insurance Corporation and for which a conservator or receiver was or is appointed during the period beginning on January 1, 1989 and ending on August 8, 1992.

Section 21A(p)(2) of the Federal Home Loan Bank Act, as added by section 501 of FIRREA, directs the RTC, not later than 180 days after the date of enactment of the legislation, to promulgate rules and regulations governing conflicts of interest, ethical responsibilities, and post-employment restrictions applicable to its members, officers, and employees that are no less stringent than those applicable to employees in the FDIC. In implementation of that section, the RTC hereby issues for public comment and proposes the adoption of a new part 1605 of its rules and regulations, to be entitled "Employee Responsibilities and Conduct," which prescribe standards of ethical and other conduct for members, officers, and employees of the RTC which are substantially similar to and are no less stringent than those applicable to employees of the FDIC, but which differ in certain respects simply to reflect the differences in the missions of the two agencies.

As proposed, part 1605 would be comprised of six subparts, as follows:

Subpart A. This subpart sets out the definitions and administrative provisions which control throughout the regulation. Generally, the administrative provisions are the same as in the present standards of conduct regulations of the FDIC. Under these provisions, each employee is responsible for compliance with the regulation; the Ethics Counselor is responsible for the RTC's ethics program; the Executive Secretary of the FDIC is designated as the Ethics Counselor for the RTC; and remedial actions for violations can be appealed to the Chairperson.

A number of new definitions are established, many of which are self-explanatory. Noteworthy changes include the following: The terms "default on a material obligation," "pattern or practice of defalcation," and "substantial loss to the federal deposit insurance funds" reflect the mandate of FIRREA that no person be employed by the RTC who does not meet the minimum competency, experience, integrity, and fitness requirements established by the Oversight Board in subpart G of its proposed regulation, 12 CFR part 1505. The terms "RTC" and "RTC employee" are defined to reflect the role of the FDIC as exclusive manager of the RTC and the status of the RTC as a separate agency of the United States.

Subpart B. This subpart mostly incorporates the provisions of 5 CFR Part 735, the U. S. Office of Government Ethics regulation which establishes government-wide standards of conduct for federal employees. Because 5 CFR 735.101 requires the RTC to incorporate the provisions, they will not be discussed in great detail.

In recognition of the responsibility of the RTC to utilize, to the extent deemed practicable and efficient, the services of private persons in carrying out its functions and activities, § 1605.8, which restricts the acceptance of gifts, entertainment, favors, and loans from persons affected by RTC decisions, has been modified to make it clear that the sources from whom such gratuities may not be accepted include officers, directors, or employees of insured depository institutions in conservatorship as well as trade associations comprised of members who do or seek to do business with the RTC. Section 1605.8(b)(5) references written guidelines applicable to the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function. The guidelines now in effect within the FDIC will be extended to the RTC. Section 1605.14(a) will be amended to reflect the regulatory requirement proposed by the Oversight Board that the RTC adopt polices and procedures which prohibit the employment of persons to serve on behalf of the RTC who: (1) Have been convicted of a felony; (2) have been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency; (3) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or (4) caused a substantial loss to the federal deposit insurance funds.

Subpart C. This subpart sets out the RTC's rules relating to financial interests and outside activities of employees. As in the FDIC's present regulation, employees generally are prohibited from having financial interests or obligations that conflict or appear to conflict with their RTC duties and responsibilities.

The rules relating to extensions of credit in § 1605.16 have been crafted to reflect the activities of the RTC which differ from those of the FDIC. Section 1605.18 reflects the diversity of activities in which the RTC may engage and the concentration of real estate properties which will comprise its portfolio. As proposed, this section will prohibit investments in any securities issued on behalf of the RTC, investments in any securities of open- or closed-end funds established to acquire insured depository institutions offered for sale by the RTC, and ownership of stock or other interests in limited real estate partnerships, joint ventures, or other firms which, to an employee's knowledge, have been qualified to conduct business with the RTC. Other proposed changes from the FDIC's regulation reflect the RTC's role as conservator of certain institutions and prohibit the purchase of assets of insured depository institutions in conservatorship or the misuse of conservatorship property.

Section 1605.23 prohibits an RTC employee from engaging in any outside employment or activity relating to the real estate business, including, but not limited to, real estate brokerage, management and sales, property insurance, and appraisal services. It further requires that an employee receive the written approval of the appropriate director prior to engaging in outside employment or other activities covered by the regulation.

Subpart D. This subpart sets out RTC rules relating to the filing of required reports by RTC employees. There are no changes from the requirements now established for FDIC employees.

Subpart E. This subpart proposes post-employment limitations on former RTC employees, including special government employees, with respect to participation in matters connected with their former duties and responsibilities while serving with the RTC.

This proposal differs from the FDIC's regulation in that it proposes the adoption of a provisions, § 1605.31, which is a one-year limitation on aiding or advising any other person (except the United States) with regard to a particular matter involving a specific party or parties in which the former employee participated personally and substantially and in which the United States is a party or has a direct and substantial interest, if such aiding or advising is based on information not publicly available.

Subpart F. This subpart prescribes standards of conduct applicable to special government employees of the RTC, including members of the National and Regional Advisory Boards who will be appointed by the Oversight Board but who will become special government employees of the RTC. The subpart includes a section by section analysis of the application of the provisions of title 18 U.S.C., to this category of employees.

List of Subjects in 12 CFR Part 1605

Conflict of interests, Credit, Disclosure requirements, Government employees, Former government employees.

Accordingly, Part 1605 is proposed to be added to chapter XVI of title 12 of the Code of Federal Regulations as follows:

PART 1605—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

Sec.

1605.1 Purpose and scope.
1605.2 Definitions.
1605.3 Employee responsibility, counseling, and distribution of regulation.
1605.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.
1605.5 Sanctions and remedial actions.
1605.6 Review of remedial actions.

Subpart B—Ethical and Other Conduct and Responsibilities of RTC Employees

1605.7 General rules.
1605.8 Gifts, entertainment, favors, and loans.
1605.9 Travel expenses.
1605.10 Use of official information.
1605.11 Lectures, speeches, and manuscripts.
1605.12 Employment by RTC of relatives.
1605.13 Use of property and resources owned or controlled by the RTC.
1605.14 Indebtedness, gambling, and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

1605.15 General rules.
1605.16 Extensions of credit.
1605.17 Securities of insured depository institutions.
1605.18 Other investments.
1605.19 Purchase of assets of institutions in conservatorship or receivership.
1605.20 Purchase of RTC property.
1605.21 Purchase of assets of insured depository institutions.
1605.22 Providing goods or services to the RTC.
1605.23 Outside employment and other activity.
1605.24 Employment of family members by persons other than the RTC.

Subpart D—Reports of Interest in Insured Depository Institution Securities, Interest in RTC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

1605.25 Report of interest in insured depository institution securities.
1605.26 Report of interest in RTC decision.
1605.27 Report of employment upon resignation.
1605.28 Statement of employment and financial interests.
1605.29 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Subpart E—Limitations on Post Employment Activities of Former Employees, Including Special Government Employees

1605.30 Limitations on representation.
1605.31 Limitations on aiding or advising.
1605.32 Consultation as to propriety of appearance before the RTC.
1605.33 Suspension of appearance privilege.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

1605.34 General.
1605.35 Applicability of 18 U.S.C. 203 and 205.
1605.36 Applicability of 18 U.S.C. 207.
1605.37 Applicability of 18 U.S.C. 208.
1605.38 Advice on rules of conduct and conflicts of interest statutes.
1605.39 Use of RTC employment.
1605.40 Use of inside information.
1605.41 Coercion.
1605.42 Gifts, entertainment, favors, and loans.
1605.43 Statements of employment and financial interests.

Authority: 3 CFR 1964–1965 Comp.; 5 CFR 735.104; 5 CFR 2637.10(a); E.O. 12674; 12 U.S.C. 1441a(p)(2);

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 1605.1 Purpose and scope.

In order to assure the proper performance of RTC business and to maintain public confidence in government, members, officers, and employees of the RTC (hereinafter collectively referred to as "RTC employees") are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. This part establishes the policies and procedures of the RTC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth. This part further sets out the

policies and procedures for employee reporting of financial interests and obligations.

§ 1605.2 Definitions.

For the purposes of this part:

(a) *Affiliate* means any depository institution holding company of which an insured bank or insured savings association is a subsidiary and any other subsidiary of such depository institution holding company.

Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) *Appearance* means an individual's physical presence before the United States in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) *Appropriate director* means the Executive Director of the RTC and all other persons holding director positions within the RTC including regional directors or regional counsel assigned to the RTC.

(d) *Assisted entity* means: (1) Any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (d)(1) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (d)(1) of this section; *Provided*, that an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or depository institution holding company and the RTC.

(e) *Assuming entity* means any insured depository institution or depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(f) *Attorney* means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division, who is assigned or detailed to perform functions or activities of the RTC. The term does not include outside attorneys engaged in the private practice of law and retained by the RTC.

(g) *Chairperson* means the Chairperson of the Board of Directors of the RTC.

(h) *Conservator* means the RTC when designated to take over the management of the affairs of an insured depository institution.

(i) *Contractor* means any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the RTC, under the direct supervision of an officer or employee of the RTC. The term does not include independent contractors retained by the RTC whose conduct is regulated by 12 CFR part 1606.

(j) *Covered employee* means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to §§ 1605.28(a) or 1605.29.

(k) *Default on a material obligation* means any transaction in which an insured depository institution failed to receive the principal and/or interest payments to which it is entitled, and there is a loss to the institution, and with respect to which the insured depository institution has a continuing legal claim for an amount which exceeds $50,000.

(l) *Dependent child* means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(m) *FDIC* means the Federal Deposit Insurance Corporation, which serves as exclusive manager of the RTC.

(n) *Honorarium* means a payment, usually for services on which custom or propriety forbids a price to be set.

(o) *Insured depository institution* means any bank or savings association the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund.

(p) *Investment* means any interest in securities, real property, limited partnerships, or other assets held for the production of income.

(q) *Member of the employee's immediate household* means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(r) *Official responsibility* means the direct administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, recommend or advise official action, to investigate, or to express staff opinions in dealings with the public.

(s) *Oversight Board* means the oversight board established to oversee and be accountable for the RTC.

(t) *Pattern or practice of defalcation* means there are two or more instances of uncured defaults as to which there are continuing legal claims, resulting in losses to one or more insured depository institutions, which, in the aggregate, exceed $50,000.

(u) *Person* means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(v) *Reviewing official* means the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(w) *RTC* means the Resolution Trust Corporation and includes the National Advisory Board and the Regional Advisory Boards.[1]

(x) *RTC employee* means any individual member of the Board of Directors, officer, or employee, including a liquidation graded employee, of the FDIC assigned to and performing only the responsibilities of the RTC in the FDIC's capacity as the exclusive manager of the RTC, but does not include a special government employee, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, any person employed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or any personnel utilized from any executive department or agency.

(y) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(z) *Senior employee* means any individual member of the Board of Directors of the RTC and any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

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[1] The RTC is an agency of the United States when it is acting as a corporation. When it is acting as a conservator or receiver of an insured depository institution, it is deemed to be an agency of the United States to the same extent as the Federal Deposit Insurance Corporation when it is acting as a conservator or receiver of an insured depository institution.

(aa) *Special government employee* means any employee or contractor, other than an independent contractor, serving the RTC with or without compensation, including the members of the National Advisory Board and the members of the Regional Advisory Boards, for a period estimated not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(bb) *Subsidiary* means a company the voting stock of which is 50 percent or more owned or controlled by another company.

(cc) *Substantial loss to the federal deposit insurance funds* means a loss of more than $50.000 to the funds for the protection of depositors maintained and administered by the FDIC or the former FSLIC which was occasioned by or is represented by:

(1) A loss to the insurer as a result of the disposition of, or the failure to satisfy, an obligation at its full value;

(2) An outstanding final judgment obtained by the FDIC, the FSLIC, or the RTC against the maker, endorser, or guarantor of a note or other obligation or arising from a legal action on any theory including fraud, negligence, or breach of fiduciary duty; or

(3) An outstanding final judgment obtained in favor of an insured depository institution which is now held by the FDIC, the FSLIC, or the RTC as successor.

§ 1605.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee or special government employee of the RTC is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee or special government employee within 30 days of commencement of employment or engagement, and each such employee or special government employee shall complete and file the Certification and Acknowledgment of RTC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 1605.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The RTC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the RTC's Ethics Counselor.

(b) The Assistant Executive Secretary (Ethics) of the FDIC shall act as the RTC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 1605.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review, pursuant to § 1605.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1605.6 shall take effect immediately upon receipt of notice of the determination of the Chairperson or his or her designee.

§ 1605.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1605.5, the affected employee or special government employee may request the Chairperson to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The Chairperson, or his or her designee, will promptly review the matter and will provide written notice of his or her determination, which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of RTC Employees

§ 1605.7 General rules.

RTC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the RTC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making an RTC decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the RTC.

§ 1605.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the RTC;

(2) Is or may be supervised or regulated by any federal banking agency; [2]

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or of any professional, trade, or business association comprised of members who do or seek to do business with the RTC.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the

[2] A professional, trade, or business association, a substantial majority of whose members are regulated by any federal banking agency, is itself a prohibited source of gifts, entertainment, favors, and loans for purposes of this section. (*See* Office of Government Ethics, Informal Advisory Opinion No. 87x13, Acceptance of Food and Refreshments by Executive Branch Employees (1987)).

circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 1605.16, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations (including those that have as members firms doing business with the RTC), international organizations, or government entities where it has been determined that attendance is in the interest of the RTC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the RTC. (See 18 U.S.C. 209)

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351)

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342).

§ 1605.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the RTC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the RTC will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1605.8 (b)(4) and (b)(5).

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the RTC may, and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics Counselor), accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest. The provisions of this section do not, however, prohibit employees who are permanent employees of another executive department or agency, being utilized by the RTC on a reimbursable basis, from accepting travel, lodging, or subsistence from a donor who is exempt from taxation under 26 U.S.C. 501(c)(3) where acceptance would be consistent with the other executive department's or agency's travel policies and regulations.

(e) When an employee is not on official duty and there is no payment or reimbursement by the RTC for expenses of travel, lodging, or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging, or subsistence provided by family members or personal friends.

§ 1605.10 Use of official information.

(a) Except as permitted in § 1605.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her RTC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905)

§ 1605.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the RTC unless the employee receives prior approval, and prior clearance of material to be published, by the Executive Director of the RTC or his or her designee.

(b) An employee shall not use his or her title in connection with any material submitted for publication unless the material contains a statement indicating that the views contained therein are those of the employee as an individual and do not necessarily represent the views of the RTC or unless such use is approved in advance by the Executive Director of the RTC or his or her designee.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her RTC employment unless the information is available to the general public or the Executive Director of the RTC or his or her designee gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) Except as provided in § 1605.8(b)(2), no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the RTC or contains information that is not

otherwise available to the general public.

(e) No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-RTC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with RTC-related matters. (See 2 U.S.C. 441i).

(f) No employee who is appointed by the President to a full-time noncareer position in the RTC shall receive any earned income for any outside employment or activity performed during that Presidential appointment. (See E.O. 12565, section 102).

§ 1605.12 Employment by RTC of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an Oversight Board official, an RTC official, a special government employee of the RTC, or any independent contractor to the RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the Oversight Board, the RTC, or the FDIC.

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An RTC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board, the RTC, or the FDIC;

'2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board, the RTC, or the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board, RTC, or FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management, the RTC Personnel Branch Chief and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the RTC which is outside the scope of the supervisor's authority.

§ 1605.13 Use of property and resources owned or controlled by the RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources owned or controlled by the RTC (including, but not limited to, personnel, equipment, leased property, or property which the RTC holds in its capacity as receiver, liquidator, liquidating agent, or conservator of the assets of an insured depository institution) for other than officially approved activities. An employee has a positive duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1605.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This section does not require the RTC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor. The RTC is prohibited by statute from employing or retaining any employee who engages in a pattern or practice of defalcation to an insured depository institution or causes a substantial loss to the federal deposit insurance funds.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the RTC or the government, or while on duty for the RTC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest, or other conduct prejudicial to the RTC. Any employee who has information indicating that another employee is engaging or has engaged in any criminal conduct or is violating or has violated any of the provisions of this part is encouraged to convey such information to the RTC's Inspector General.

(d) *Discrimination.* An employee shall not discriminate against any other employee or applicant for employment, nor exclude any person from participating in or deny any person the benefits of any program or activity administered by the RTC, on the basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political Activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates but are generally forbidden to take an active part in political management or campaigns. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96–303, 94 Stat. 855–856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201–209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or

property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(14) Prohibition against the use of manipulatives or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b–5);

(15) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913); and

(16) Prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1605.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's RTC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her RTC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208).

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208).

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207).

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairperson or the Director(s) (Appointive),[3] receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the RTC. (See 18 U.S.C. 208).

§ 1605.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000:

(a) The Executive Director, a division director, any deputy or assistant thereto, a regional director, a deputy regional director, and any other covered employee of the RTC (or a covered employee of the FDIC while detailed to the RTC) may not, directly or indirectly, accept or become obligated on any extension of credit from any insured depository institution in conservatorship or from an assisted or assuming entity, for so long as such institution remains in conservatorship or for so long as such entity remains an assisted or assuming entity. For employees assigned to a regional or consolidated office, this prohibition is limited to institutions or entities located within the employee's region of official assignment and, for the purposes of this paragraph (a), shall be deemed to include:

(1) The insured depository institution resulting from the failure of an insured depository institution and any of its wholly owned subsidiaries within the employee's region of official assignment if the assuming entity is a depository institution holding company;

(2) The assuming entity, all of its branches, and all of the wholly owned subsidiaries of the failed institution within the employee's region of official assignment if the assuming entity is an insured depository institution located in the employee's region of official assignment; and

(3) The wholly owned subsidiaries of the failed institution, which subsidiaries are located in the employee's region of official assignment if the assuming entity is a depository institution located outside the employee's region of official assignment.

(b) An individual member of the Board of Directors (except the Comptroller of the Currency and the Director of the Office of Thrift Supervision), and any other covered employee assigned to the Washington office, who has participated personally and substantially on behalf of the RTC in any matter involving an assisted or assuming entity, may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity.

(c) The Executive Director of the RTC, the holder of any position immediately subordinate thereto, a managing agent of an insured depository institution in conservatorship, or any other covered employee of the RTC who participates in the management of an insured depository institution in conservatorship is disqualified from participating in any matter (including any audit, visitation, or investigation) involving, or from otherwise taking any action on behalf of the RTC with regard to, any insured depository institution, financial institution, or person that has, either directly or indirectly, extended credit to such employee. Every other covered employee is disqualified from taking any action on behalf of the RTC with regard to any insured depository institution, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of $10,000. The appropriate director, in consultation with the Ethics Counselor, may also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another division or location, or action affecting the status of the creditor [4] results in an extension of credit prohibited by paragraphs (b) and (c) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of

[3] The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairperson if he or she receives the prior written determination of the President (or the Director(s) (Appointive) if he or she receives the prior written determination of the Chairperson that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the RTC. (See 18 U.S.C. 208).

[4] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(e)(1) An employee, other than an employee described in paragraph (b) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may request permission to renegotiate the loan. An employee described in paragraph (b) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made, in writing, to the appropriate director and Ethics Counselor, or, in the case of an employee described in paragraph (b) of this section, to the Ethics Counselor, stating:

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original loan;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered the employee;

(v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, without the prior review and concurrence by the Ethics Counselor.

(f) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or, in the case of an employee described in paragraph (b) of this section, he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor.

(g)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless:

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as comaker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has, or in the case of student loans will have, the income, the ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (g)(1) of this section, not deemed to be an extension of credit to an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 1605.17 Securities of insured depository institutions.

(a) While employed by the RTC, an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured depository institution or affiliate thereof whenever:

(i) Ownership or control was acquired prior to commencement of RTC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 1605.25, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the insured depository institution or affiliate; *Provided*, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her RTC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of entities other than depository institutions; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured depository institution or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the RTC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless:

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 1605.18 Other investments.

(a) While employed by the RTC, an employee may not purchase, own, or control, directly or indirectly, any securities which are issued on behalf of the RTC to finance holdings of assets acquired in the resolution or liquidation of insured depository institutions by the RTC or to fund the operations of any bridge bank or other institution organized by the RTC under section 21A(b)(ii)(A) (iv) or (v) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(b) While employed by the RTC, an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund established to acquire insured depository institutions offered for sale by the RTC.

(c) While employed by the RTC, an employee may not acquire, directly or indirectly, any financial interest which conflicts or appears to conflict with his or her official duties and responsibilities. Such interests may include, but are not limited to, stock or other ownership interests in limited real estate partnerships, joint ventures, or other investments for the production of income which involve firms or institutions which, to the employee's knowledge, have been qualified to conduct business with the RTC.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of RTC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 1605.26, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action which could have a direct and predictable impact on the employee's financial interest; *Provided,* that the Ethics Counselor, in consultation with the appropriate director and in compliance with rules to be promulgated by the U.S. Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

(2) The Ethics Counselor may require that an employee divest his or her ownership or control of investments otherwise permitted by paragraph (d)(1) of this section whenever disqualification might result in a substantial impairment of the employee's ability to perform his or her RTC duties and responsibilities.

(e)(1) An employee may have an indirect interest in an otherwise prohibited investment which arises through ownership of shares (or other investment units) of a publicly held company, mutual fund, or investment trust which has a broadly diversified portfolio not specializing in any particular industry and which is:

(i) Widely held and is not under the employee's control; or

(ii) A limited partnership interest in a large public partnership (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership derive from business with the RTC.

(2) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest; *Provided,* that the Ethics counselor, in consultation with the appropriate director and in compliance with rules to be promulgated by the U.S. Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

(f)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless:

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 1605.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the RTC manages as conservator of an insured depository institution or which the RTC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the RTC confidential information regarding the sale or disposition of assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in guidelines applicable to such sale or disposition.

§ 1605.20 Purchase of RTC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the RTC holds in its corporate capacity unless:

(1) The property has been declared excess property by, and is sold in accordance with standards and procedures prescribed by, the Director of the FDIC's Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the FDIC's Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the RTC if:

(1) The employee is employed in the Facilities Management and Operations Section of the FDIC's Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the RTC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 1605.21 Purchase of assets of insured depository institutions.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured depository institution unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any insured depository institution in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 1605.22 Providing goods or services to the RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the RTC either in its corporate capacity or in its capacity as conservator, receiver, liquidator, or liquidating agent of the assets of an insured depository institution unless the Executive Director of the RTC determines, in accordance with the provisions of § 1605.23 (d) and (e) and standards and procedures approved by the Board of Directors, that it is in the best interest of the RTC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the RTC.

§ 1605.23 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her RTC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the RTC. Employment or activity which is not compatible with the employee's duties and responsibilities to the RTC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the RTC. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union, except the FDIC Employees' Federal Credit Union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance, and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the RTC. (See 18 U.S.C. 209).

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203).

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205).

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205).

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1605.16 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or activity must obtain the prior written approval of the appropriate director, who shall consult with the Ethics Counselor as to whether such employment or activity is compatible with the purposes of this part.

§ 1605.24 Employment of family members by persons other than the RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the RTC.

A covered employee shall report within 30 days of the commencement of employment of the family member.

(b) Generally, a covered employee will not be assigned to any matter involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the RTC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Reports of Interest in Insured Depository Institutions Securities, Interest in RTC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

§ 1605.25 Report of interest in insured depository institution securities.

All employees must report, on the prescribed form, direct or indirect ownership of securities of insured depository institutions within 30 days of commencement of employment, within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 1605.17, or, if the interest was previously acquired, within 30 days of the entity's becoming an insured depository institution.

§ 1605.26 Report of interest in RTC decision.

Except for interests reported in accordance with §§ 1605.17 and 1605.25, an employee with a financial interest (other than a deposit or indebtedness) in an insured depository institution or other entity that may be affected by his or her participation in an RTC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment, within 30 days of acquiring the interest, if acquired subsequent to employment, or, if the interest was previously acquired, within 30 days of the insured depository institution's or other entity's becoming subject to an RTC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the chairperson may determine for good cause shown.

§ 1605.27 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

§ 1605.28 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 1605.29, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual Board members (except persons serving in such capacities when the individual Board members or the Board of Directors are acting as employees of the FDIC or unless otherwise subject to the regulations of other federal agencies);

(2) Holder(s) of the position(s) immediately subordinate to the Executive Director of the RTC, or the director of a division or office;

(3) Branch or comparable office heads;

(4) Employees at or above the grade 5 level in job series 1160, 301, and 341;

(5) Employees serving as financial economists in job series 110;

(6) Employees at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(7) Persons employed by the RTC as attorneys;

(8) Internal auditors and investigators at or above the grade 5 level;

(9) Voting members and designees appointed to any RTC standing committee;

(10) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(11) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other RTC regulation; *Provided,* that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any insured depository institution or other enterprise.

(b) *Submission of statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year, with instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing official.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless:

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairperson or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the RTC:

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairperson for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 1605.29 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency and the Director of the Office of Thrift Supervision), employees at or above the RTC's Executive Level I, and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file:

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 2634; and

(b) Confidential Reports of Indebtedness reporting all indebtedness to insured depository institutions and any affiliates thereof, not otherwise reportable in accordance wirh the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Post Employment Activities of Former Employees, Including Special Government Employees

§ 1605.30 Limitation on Representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof:

(1) To the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise.

(See 18 U.S.C. 207(a) and 5 CFR 2637.201.)

(b) No former employee or special government employee, within two years after termination of employment with the RTC, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof:

(1) To the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(See 18 U.S.C. 207(b)(i) and 5 CFR 2637.202.)

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a specialized effect on a certain party or group of parties.

(See 5 CFR 2637.201.)

(d) No former senior employee, within two years after termination of employment with the RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance;

(1) Before the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

(See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203.)

(e) For a period of one year after termination of employment with the RTC, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the RTC or any of its officers or employees, in connection with any particular government matter, whether or not involving a specific party, which is pending before the RTC, or in which the RTC has a direct and substantial interest.

(See 18 U.S.C. 207(c) and 5 CFR 2637.204.)

§ 1605.31 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the RTC, no former employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States) concerning any judicial or other proceeding, application, request for a ruling or other

determination, contract, claim, or other particular matter:

(1) In which, to the former employee's knowledge, the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purposes of paragraph (a) of this section, the limitations on aiding and assisting shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under 5 U.S.C. 552, which information is so designated as exempt by the RTC or the Oversight Board, and which information is the basis for the aid or advice.

§ 1605.32 Consultation as to propriety of appearance before the RTC.

Any former employee who wishes to appear before the RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the RTC, may consult the Ethics Counselor as to the propriety of such appearance.

§ 1605.33 Suspension of appearance privilege.

Any former employee or special government employee who knowingly fails to comply with the provisions of this subpart may be prohibited from making an appearance before or an oral or writtan communication with the RTC or the Oversight Board for such period of time as provided in procedures to be adopted by the RTC and the Oversight Board.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1605.34 General.

(a) Special government employees are those serving the RTC, by performing temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.[5]

(b) The rules of conduct contained in Subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the RTC is concerned except in the instances discussed in this Subpart F. However, the prohibition in § 1605.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the RTC. Further, the prohibition in § 1605.23, concerning outside employment, shall not apply to members of the National or Regional Advisory Boards.

§ 1605.35 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular government employee, except in the discharge of his or her official duties, from representing another person before a department, agency, or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) before a court or government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she at any time participated personally and substantially in the course of his or her government employment. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365 days. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the government as well as on the days when he or she does.

(c) An employee who undertakes service with the RTC and another federal entity, including the Oversight Board, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires him or her to participate personally in a matter before the RTC or the Oversight Board. In such a situation, the special government employee should participate in the matter for his or her regular employer only with the knowledge of the appropriate director, after consultation with the Ethics Counselor. However, an independent member of the Oversight Board or a member of the National or Regional Advisory Board may not participate on behalf of his or her regular employer, and must be fully recused from, any contract or other particular matter such employer has before or involving the Oversight Board or the RTC. Thus, employers of persons who also serve as independent members of the Oversight Board or the National or Regional Advisory Boards are not barred from contracting with the RTC or the Oversight Board provided that such members are in full compliance with this paragraph.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointment to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the RTC or the Oversight Board.

§ 1605.36 Applicability of 18 U.S.C. 207.

(a) Section 207 of title 18, U.S.C., applies to individuals who have left government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the government or a court) in which he or she participated personally and substantially on behalf

[5] All members of the National and Regional Advisory Boards are considered to be special government employees for purposes of this part.

of the government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b). In addition, section 207 of title 18, U.S.C., prevents a former employee, for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department, or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

(b) A special government employee who serves 61 days or more in a given calendar year in a position designated as a senior employee position under the Ethics in Government Act of 1978 may not represent anyone other than the United States before the employee's former agency in any particular matter (whether or not a specific party or parties are involved) and may not make oral or written communications, with intent to influence, to that agency for a period of one year after his or her employment has ceased. For purposes of this restriction, the term "agency" includes both the RTC and the Oversight Board but does not include the Resolution Funding Corporation or the Federal Housing Finance Board.

§ 1605.37 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of government personnel, including special government employees, in the course of their official duties. In general, it prevents an employee or special government employee from participating personally and substantially as a government officer or employee in a particular matter in which, to his or her knowledge, the employee, his or her spouse, minor child, partner, profit or nonprofit organization in which the employee is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted subject to the provisions of regulations to be issued by the U.S. Office of Government Ethics. Until such regulations are issued and waivers thereunder granted, special government employees are disqualified from participating in any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208 of title 18, U.S.C.

§ 1605.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the propriety of any conduct failing within the conflicts of interest statutes or regulations should confer with the Ethics Counselor. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest will also be provided by the Ethics Counselor to any special government employee, prospective government employee, and their appointing officials and supervisors desiring it.

§ 1605.39 Use of RTC employment.

A special government employee shall not use his or her RTC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1605.40 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her RTC employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under RTC authority which has not become part of the body of public information.

(b) The provisions of § 1605.11 (a) through (d) with regard to employees shall be applicable to special government employees.

§ 1605.41 Coercion.

A special government employee shall not use his or her RTC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1605.42 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the RTC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 1605.8(b) with regard to employees shall be applicable to special government employees.

§ 1605.43 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports:

(1) All other employment; and

(2) The financial interests of the special government employee which the RTC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the RTC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns, and individuals paid out of "Imprest Funds" to assist in insured depository institution liquidations.

(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later than the time of employment of the special government employee. Each special government employee shall keep his or her statement current throughout his or her employment with the RTC by the submission of amended or annual statements as required.

(e) The provisions of § 1605.27 (c) through (h) shall apply to statements filed under this section.

By order of the Board of Directors.

Dated at Washington, DC this 14th day of December, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-29588 Filed 12-21-89; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245-AB97

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the present rules governing physical disaster and economic injury loans in conformity with Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988 ("Act"), approved November 3, 1988 (102 Stat. 2989). The proposal would also resolve interpretive questions which have arisen since the last revision in 1984 (49 FR 32310).

DATE: Comments are due on or before January 22, 1990.

ADDRESS: Written comments may be sent to Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street, NW., Room 820, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, 202-653-6879.

SUPPLEMENTARY INFORMATION: Section 119 of the Act provides a statutory definition of "disaster." Accordingly, the definition of disaster in § 123.3 would be amended to incorporate the statutory definition. The Conference Report for the Act, H. Report 100-1029, 100th Congress, 2nd Session (Oct. 3, 1988), p. 37, states the Conferees' intention that SBA not disqualify events which do not result in physical damage. Such events include the "El Nino" phenomenon, "red tide," food contamination from known or unknown causes, oil spills, or other major industrial accidents. Accordingly, the regulatory definition expands on the statutory definition by including these events.

The Conference Report also states that the Conferees do not intend to reopen loan programs which have been repealed. It is therefore useful to recall these repealed programs, because the new definition is limited by this Congressional intent. These repealed loan programs assisted businesses adversely affected by Federal construction projects, product disasters, Federal regulations, strategic arms limitation, base closings, the energy crisis, and economic dislocations caused by severe natural conditions or other economic dislocations. These provisions were repealed in 1981. Two additional loan programs, covering economic injury resulting from any Federal activities or regulations and drastic currency fluctuations, were repealed in 1986.

Section 120(a) of the Act has made nurseries, which are victims of drought disasters, eligible for economic injury disaster assistance. Therefore, the introduction to the regulations (§ 123.2) would be amended to reflect this change. A definition of "nursery" would be added to § 123.3. A conforming amendment to § 123.41(b) relating to economic injury loans would also be made.

Section 120(b) of the Act made the interest rate for "other concerns, including agricultural cooperatives" unable to obtain "credit elsewhere" the same as that for businesses unable to obtain "credit elsewhere." Section 123.29 of the regulations would be amended to make nonprofit organizations and agricultural cooperatives without "credit elsewhere" eligible for the lower interest rate, currently 4 percent.

Section 121 of the Act permits an addition of up to 20 percent of a disaster loan amount, to pay for protective devices against future recurring disaster damage. An example of such a device is a seawall. New § 123.24(j) of the regulations would permit disaster victims to appy for such additional loan amounts up to the cost of such installation or 20 percent of the original loan amount, whichever is less. Applications under this subsection generally must be made before the disaster loan is fully disbursed. If the original loan amount subsequently is increased, the additional loan amount may also be increased. However, any decrease in the original loan amount would not require a reduction of the additional loan amount. Conforming amendments would be made to § 123.21(e), § 123.24(a), and to § 123.25(a).

Section 122 of the Act instructs SBA not to require collateral for physical disaster loans under $10,000. Section 123.11 of the regulations would so state. The same section would add that SBA shall not require collateral for economic injury loans under $5,000. The section also states that SBA will not aggregate physical and economic injury disaster loans to the same victim for the purpose of determining a need for collateral.

Proposed changes not required by the Act include several minor technical changes due to renumbering of sections in part 120 of this Chapter.

Since 1986, SBA's disaster loan program has been exempted from the requirements of the Real Estate Settlement Procedures Act of 1974 (RESPA) by letter dated April 23, 1986 from the Secretary of the Department of Housing and Urban Development. Accordingly, the references to RESPA would be deleted.

SBA proposes to delete the words "smaller" from § 123.23(c) *Certification by Governor* in order to correct the erroneous reference to "counties or other *smaller* political subdivisions."

In § 123.24(f), dealing with the refinancing portions of physical disaster loans, "substantial damage" would be redefined to mean either 40 percent or more of the market value or replacement cost of the property including the land, or 50 percent or more of the market value or replacement cost of the property not including the land. A disaster victim with damage within any one of these categories may be eligible for a refinancing addition to the disaster loan, if the victim does not have "credit elsewhere" and if the property is to be replaced or repaired.

Proposed § 123.25(e), would eliminate the requirement for disaster victims seeking state grants to obtain first a certificate of ineligibility from SBA. Under the new rule, SBA furnishes the Federal Emergency Management Agency (FEMA) with tables showing minimum income levels for repayment ability in various family situations. FEMA, in turn, has determined that applicants, whose income is below the

stated level, are eligible to apply for grant assistance. The amendment would also eliminate a clause limiting the applicability of this paragraph to losses of personal property, because the State grant program is not restricted to such losses. The amendment would further refer to the statute formerly called the "Disaster Relief Act of 1974" as the Robert T. Stafford Disaster Relief and Emergency Assistance Act. See Section 102 of Public Law 100–707, approved November 23, 1988, 102 Stat. 14689).

Compliance with Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

SBA has determined that these proposed regulations do not constitute a major rule for purposes of Executive Order 12291, because they would not have an annual impact on the national economic of $100 million or more. In this regard, we estimate that the failure to require collateral for the smaller loans will affect only $1 million of loans. The reduction in the interest rate for non-profit concerns without credit elsewhere will not exceed $215,000 annually. The new definition of "disaster" may cause SBA to make additional loans of up to $7 million. We expect that SBA will make no more than $4 million in drought disaster loans to nurseries. As to mitigation measures, we estimate a maximum of $30 million in additional loans. The change in the refinancing regulations and the other editorial amendments have no monetary impact. Accordingly, we anticipate that these proposed regulations, if adopted, will have an impact of less than $44 million.

SBA certifies that these proposed regulations have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, we certify that these regulations, if adopted, will not impose any additional reporting or recordkeeping requirements.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these regulations may have a significant economic impact on a substantial number of small entities. We have indicated above the dollar amounts of the impact of each proposed regulation. The following analysis is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. The new definition of "disaster," the renunciation of collateral for the smaller loans, the reduction of the interest rate for nonprofit entities without "credit elsewhere," the availability of drought disaster loans for nurseries, the availability of additional disaster loan amounts for the mitigation of recurring damage are all mandated by the Act.

2. The legal basis for these rules is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

3. One objective of these proposed regulations is to implement the Act. Another objective is to make it easier for the public to avail themselves of the new disaster lending authority given to SBA and to clarify existing rules.

4. These new regulations will apply to an unpredictable number of small business and individual disaster loan borrowers. In fiscal year 1988, SBA made 13,463 disaster loans.

5. There are no projected recordkeeping, reporting or new compliance requirements in these proposed regulations.

6. There are no Federal rules which would duplicate, overlap, or conflict with the proposed regulations.

7. There are no significant alternatives to these proposed rules which would minimize any significant economic impact of the proposed rules on small entities.

8. These regulations, if adopted, are not likely to cause an increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or have adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based businesses to compete with foreign-based businesses in domestic or export markets.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small businesses.

Accordingly, 13 CFR part 123 is proposed to be amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: Sections 5(b)(6); 7 (b), (c), (f), Small Business Act, 15 U.S.C. 634(b)(6); 636 (b), (c), (f); Pub. L. 100–590.

2. Section 123.2 *Introduction* is revised to read as follows:

§ 123.2 Introduction

SBA is authorized to make or to guarantee loans as necessary or appropriate to victims of sudden physical disaster, or of economic injury caused by unforeseeable and unintended events resulting from a sudden physical disaster. SBA is not authorized to provide assistance in gradual physical occurrences such as drought (except as to nurseries, see § 123.41(b)), soil erosion, excessive rainfall (without floods), lack of snow or beach pollution. Congress has not reopened programs now repealed which in the past provided, among other things, disaster assistance to businesses adversely affected by Federal government actions or by price or market fluctuations. No economic injury disaster loans are authorized for applicants able to obtain Credit Elsewhere (see definition in § 123.3). No person who has been convicted of a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of the conviction, to receive any benefit under any law of the United States providing relief for disaster victims (5 U.S.C. 7313 note).

§ 123.3 [Amended]

3. Section 123.3 *Definitions* is amended by revising the definition of *Disaster* therein to read as follows:

* * * * *

Disaster: This term means a sudden event which causes severe physical damage, including, but not limited to, floods, hurricanes, tornadoes, earthquakes, volcanic eruptions, windstorms, land- or mudslides, tidal waves, fires, explosions, riots or civil disorders and industrial accidents (including oil spills). It also means sudden physical events that cause substantial economic injury, but may not cause physical damage to the victim's property, events such as ocean conditions resulting in a significant displacement, (e.g., by major ocean currents) or closure (e.g., because of toxic algae blooms) of customary fishing waters, and contaminations of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victim.

* * * * *

4. Section 123.3 is further amended by inserting after the definition of *Major Source of Employment* the following new definition:

* * * * *

Nursery: Any commercial establishment deriving at least ninety percent (90%) of its annual receipts (as defined in part 121 of this chapter) from the growing and sale of ornamental trees, shrubs, vines or other horticultural products, including but not limited to flowers, vegetable seedlings and sod.

* * * * *

§ 123.4 [Amended]

5. Section 123.4 *Types of loans* is amended by removing "§§ 122.7, 122.8

and 122.10" therefrom and inserting "§ 120.3" instead.

§ 123.5 [Amended]

6. Section 123.5 *Financial Institutions* is amended by revising the reference to "§ 120.4" therein to read "§ 120.2–4".

§ 123.11 [Amended]

7. Section 123.11 *Collateral* is amended by removing the last sentence thereof, and inserting instead the following:

* * * * *

* * * SBA shall not require collateral for physical disaster loans (see Subpart B of this part) of ten thousand dollars ($10,000) or less, and generally will not require collateral for economic injury disaster loans (see Subpart C of this part) not exceeding five thousand dollars ($5,000). Where loans under both Subparts B and C are made to one borrower for physical and economic injuries sustained in the same disaster, the loan amounts shall not be aggregated to determine the need for collateral. When SBA requires an applicant to pledge available collateral for a physical disaster loan in excess of ten thousand dollars ($10,000) or for an economic injury disaster loan, the applicant's refusal to pledge such collateral may justify the decline of such loan.

§ 123.21 [Amended]

8. Section 123.21 *Physical disaster loan authority* is amended by inserting in paragraph (e) *Loan purposes* after the first sentence a new sentence to read as follows:

* * * * *

(e) * * * Additional loan amounts may be used to meet minimum standards of safety and decency or building code requirements (see § 123.24(i)) or to protect damaged or destroyed real property from possible future disasters (see § 123.24(j)). * * *

9. Section 123.21 *Physical disaster loan authority*, paragraph (e) *Loan purposes* is further amended by placing a period after the words "original locations" in the last sentence thereof and removing the rest of the sentence therefrom.

§ 123.23 [Amended]

10. Section 123.23 *Declaration procedures* is amended by revising the third sentence of paragraph (c) *Certification by Governor* to read as follows:

* * * * *

(c) * * * The Governor's certification shall further specify the county or counties or other political subdivisions in which the Disaster occurred. * * *

11. Section 123.24 is amended by revising paragraph (a) and (f) thereof and to add a new paragraph (j) at the end thereof to read as follows:

§ 123.24 Conditions affecting all physical disaster loans.

(a) *Amount.* The amount of a loan is limited to the Eligible Physical Loss sustained and funds permitted under paragraphs (f), (g), (h), (i), and (j) of this section. In no event may the total amount of SBA's share outstanding and committed to a borrower, together with its affiliates as defined in part 121 of this chapter, resulting from a single Disaster, exceed $500,000, except as permitted in § 123.28 (Major employer) and limited by § 123.25 (Homeowners). SBA's share of an immediate participation in or guaranty of a loan under this Part may not exceed 90 percent of the sum of the unpaid principal and accrued interest.

* * * * *

(f) *Refinancing.* (1) A part of or all loans secured by recorded liens on property totally destroyed or substantially damaged by the Disaster (as defined in § 123.3) may be refinanced with additional disaster loan proceeds, subject in the case of Homeowners (as defined in § 123.3) to § 123.25(a)(3) and in all other cases to paragraph (a) of this section.

(2) "Property," in the case of Homeowners means real property, and in all other cases, means both real property and machinery and equipment.

(3) "Totally destroyed or substantially damaged" means damage of either.

(i) 40 percent or more of the lesser of market value or replacement cost of the damaged property (including land) at the time of the Disaster, or

(ii) 50 percent or more of such value or replacement cost of the damaged property (excluding the value of the site).

(4) Such refinancing shall be permitted only if the applicant is determined by SBA to be unable to obtain Credit Elsewhere (as defined in § 123.3) and if the totally destroyed or substantially damaged property is to be repaired, rehabilitated or replaced (including by relocation).

(5) The amount refinanced shall not exceed the lesser of the Eligible Physical Loss (as defined in § 123.3), or the balance of such lien, reduced by insurance or otherwise.

* * * * *

(j) *Mitigation.* (1) Subject to paragraph (a) of this section, an applicant for or recipient of a loan under this subpart may, at any time prior to final disbursement thereof, apply for an additional loan amount for the protection from or the mitigation of future recurring damage to the damaged real property from like events, not to exceed the lesser of the cost of such mitigation, or twenty percent (20%) of the basic loan amount to repair or replace damaged real and personal property at the same location, including permissible upgrading pursuant to paragraph (i) of this section, but loan amounts authorized pursuant to this paragraph (j) shall not duplicate amounts authorized pursuant to paragraph (i) of this section.

(2) The basic loan amount shall be determined at the time of the application under this paragraph (j), and shall reflect any decreases or increases in earlier approved loan amounts, but shall not include refinancing pursuant to paragraph (f) of this section. If such basic loan amount is increased after SBA approval of the additional loan amount pursuant to this paragraph (j), the additional loan amount under this paragraph (j) may be increased proportionately if the cost of mitigation exceeds the previously approved additional amount, not to exceed such cost. A like decrease, however, shall not require a proportionate reduction.

(3) SBA shall not accept an application pursuant to this paragraph (j) after the final disbursement of the basic loan amount, unless substantial cause essentially beyond the control of the applicant can be shown for such late application.

(4) Examples of mitigation measures include but are not limited to retaining walls, seawalls, grading and contouring land, relocating utilities and modifying structures.

§ 123.25 [Amended]

12. Section 123.25 *Special conditions—home loans* is amended by replacing the period at the end of paragraph (a)(3) with a semicolon, and further by removing paragraph (a)(4) and inserting instead new paragraphs (a)(4) and (a)(5) as follows:

(a) * * *

(4) $24,000 for mitigation pursuant to § 123.24(j) of this Part;

(5) $244,000 for the total loan within the limitations specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

13. Section 123.25 is further amended by revising paragraph (e) *State grants* to read as follows:

* * * * *

(e) *State grants.* Where a state has instituted a grant program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5178) for victims of Major Disasters, those victims who lack repayment

ability shall be immediately referred by the Federal Emergency Management Agency to appropriate State representatives without referral to SBA, in order to expedite assistance to victims. Disaster victims who desire to do so, however, may file an application with SBA in order to obtain a decision on their eligibility for financial assistance from SBA (OMB Approval No. 3245–0017 or 3245–0018).

14. Section 123.25 *Special Conditions—home loans* is further amended by removing paragraph (g) *RESPA* therefrom and renumbering present paragraph (h) as paragraph (g).

§ 123.26 [Amended]

15. Section 123.26 *Special Conditions—business loans* is amended by removing from the second sentence of paragraph (a) *Limits* the reference "§ 121.3–2" and inserting instead "Part 121."

16. Section 123.29 is revised to read as follows:

§ 123.29 Loans to privately owned colleges and nonprofit organizations.

SBA is authorized to make physical disaster loans in the case of loss or damage as a result of a declared Disaster (see § 123.23), to the extent that such loss or damage is not compensated by insurance or otherwise, to a privately owned college or university. SBA may further, in the case of a Major Disaster, waive interest payments on loans to such schools for the first three years of the term of such loans. See also § 123.13. SBA may also make such physical disaster loans to nonprofit organizations, including agricultural cooperatives (see § 123.41(b)(3)). Loans to such schools and such nonprofit organizations able to obtain Credit Elsewhere (as defined in § 123.3) shall be made at the Old Formula Rate. Loans to such concerns unable to obtain Credit Elsewhere shall be made at the same rate as loans to small concerns unable to obtain Credit Elsewhere (see § 123.26(b)).

17. Section 123.40 *Introduction* is amended by revising the first sentence thereof to read as follows:

Loans to which this subpart applies are available only to small business concerns (including small nurseries affected by a drought disaster) and small agricultural cooperatives situated in a Disaster Area (see definition in § 123.3), which have suffered or are likely to suffer substantial economic injury (as defined in § 123.41(a)) as a result of that specific Disaster (see § 123.23).* * *

18. Section 123.41 is amended by revising paragraph (b) to read as follows:

§ 123.41 General Provisions.

* * * * *

(b) *Eligible Applicants.* (1) Loans under this subpart are authorized only for small business concerns (including small nurseries affected by a drought disaster designated by the Secretary of Agriculture) and small agricultural cooperatives (see paragraph (b)(3) of this section), located within the Disaster Area and meeting the size standards of Part 121 of this Chapter as of the time (stated in the relevant declaration or designation) when the economic injury commenced, and which have suffered or are likely to suffer substantial economic (as distinguished from physical) injury directly resulting from a declared Disaster and are unable to obtain Credit Elsewhere (as defined in § 123.3).

(2) Small concerns regardless of their business activity are eligible to apply for these loans, except for multi-level sales distribution plans of the "pyramid" type, media of any description, gambling, illegal activities (see § 120.101–2 of this Chapter), investment, speculative ventures (e.g., mineral exploration), and rental property (see § 120.102 of this Chapter).

(3) Consumer and marketing cooperatives are eligible for loans under this subpart. Other cooperatives are eligible only if small and each of the owners would itself qualify as small under part 121 of this chapter. However, small agricultural cooperatives acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141), and meeting the size standards of part 121 of this Chapter as of the time of the Disaster with respect to which a declaration or designation under section 7(b)(2) of the Act has been issued, are eligible.

(4) Applicants determined by SBA as able to obtain Credit Elsewhere are not eligible for loans under this subpart.

* * * * *

§ 123.41 [Amended]

19. Section 123.41 *General Provisions* is further amended by removing from the provision in paragraph (e) thereof "§ 121.3–2" and inserting "part 121".

(Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans, 59008, Physical Disaster Loans)

Dated: August 23, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–29645 Filed 12–21–89; 8:45 am]

BILLING CODE 8025–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3699–4]

Approval and Promulgation of Implementation Plan, State of Texas; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this Federal Register notice is to propose approval of a revision to the Texas State Implementation Plan (SIP) that contains the Texas Air Control Board (TACB) Regulation VI, Section 116.3(a)(13), for the Prevention of Significant Deterioration (PSD) program. This proposed approval, when finalized, will enable the State of Texas to issue and enforce PSD permits directly in certain areas of the State without final approval by the EPA. Texas Regulation VI, Section 116.3(a)(13), does not apply to the sources located or wanting to locate on Indian lands. Neither is Section 116.3(a)(13) applicable to new major sources or modifications to existing major stationary sources which must include emissions from docked vessels. This PSD SIP revision is proposed for approval under the statutory requirements of Sections 110 and 160–169 of the Clean Air Act as amended August 1977.

Today's notice is published to solicit public comments on the proposed approval of the Texas State PSD regulations. The rationale for this proposed action is contained in this notice and further explained in detail in the *Technical Support Document.*

DATE: Comments must be received on this proposed action on or before January 22, 1990.

ADDRESSES: Written comments should be submitted to the address below: Chief, SIP New Source Section (6T–AN), Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7214

Texas Air Control Board, Technical Support and Regulation Development, 6330 Highway 290 East, Austin, Texas 78723, Telephone: (512) 451–5711.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: On November 10, 1980, the State of Texas requested delegation of the technical and administrative review portion of the Federal PSD program. The PSD partial authority was granted on April 23, 1981, subject to certain conditions. Subsequently, additional authority was granted to the State to conduct compliance inspections and to review compliance test reports for PSD sources on December 28, 1982, and a notice was published in the **Federal Register** of February 9, 1983 (48 FR 6023).

On October 26, 1987, the Governor of Texas submitted a copy of the revision to Texas Air Control Board (TACB) Regulation VI, Control of Air Pollution by Permits for New Construction or Modification, as a SIP revision to the EPA for approval. The revised section of Regulation VI (Section 116.3(a)(13)) incorporated by reference (IBR) the Federal PSD regulations (40 CFR 52.21); however, the TACB excluded Control Technology Review (40 CFR 52.21(j)), Air Quality Models (40 CFR 52.21(1) and Public Participation (40 CFR 52.21(q).

It should be noted that the October 26, 1987, submittal did not include the PM_{10} revisions which were incorporated into the Federal PSD regulations by promulgation of the PM_{10} standards on July 1, 1987, because the State regulations were in the State's process of public participation and approval before the PM_{10} promulgation date. The TACB, in response to the PM_{10} SIP requirements, has further revised Section 116.3(a)(13) to include the PM_{10} revisions in its permit regulations. Since the TACB adopted the Federal regulations by reference, the only revision to satisfy the requirements of the PM_{10} revisions was to replace the November 6, 1986 date [the date that 40 CFP 52.21 was adopted by the State] with August 1, 1987, in Section 116.3(a)(13). This amendment was adopted by the TACB on July 15, 1988, and it was submitted by the Governor on September 29, 1988, for approval. The EPA by this notice is acting on both of the October 26, 1987 and September 29, 1988 submittals, and the final approval of the Texas PSD program will be based on the combined evaluation of these revisions.

Also, on October 26, 1987, the Governor of Texas submitted a revision to the Texas SIP and regulations to meet the requirements of visibility New Source Review for Federal Class I areas (40 CFR 51.307) and the stack height regulations. The TACB stack height regulations, Regulation VI, Section 116.3(a)(14), have been reviewed and approved by the EPA and published under a separate action in the November 22, 1988, **Federal Register** (53 FR 47189).

The State's Regulation VI requires review and control of air pollution from new facility construction and modification and allows the TACB to issue permits for stationary sources subject to this regulation. Section 116.3(a)(13) of the TACB Regulation VI adopts the Federal PSD program (40 CFR 52.21) by IBR; however, the State explicitly excludes several sections of that regulation and other requirements which are necessary for an approvable PSD SIP revision. The reasons for these exclusions are discussed later in this notice. The TACB conducted a complete public participation program pursuant to 40 CFR 51.102 and the final revisions were adopted by the Board on July 17, 1987. The State's revised regulations became effective on August 30, 1987.

The EPA has reviewed and evaluated the TACB's revised Regulation VI, Section 116.3(a)(13), based on the criteria specified in the Federal regulations 40 CFR 52.21, 40 CFR 51.166, and the Clean Air Act amended August 1977. The EPA's review also included other relevant TACB regulations and the State statutes including the Texas Clean Air Act. The results of this evaluation are discussed in the following sections of this notice.

In adopting the Clean Air Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. The EPA must approve state programs that meet the requirements of 40 CFR 51.166. Conversely, EPA cannot approve programs that do not meet those requirements. However, PSD is by nature a very complex and dynamic program. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPs every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the PSD program, and the Act does not require EPA to do so. Rather, action by the EPA to approve this PSD program as part of the SIP will have the effect of requiring the state to follow EPA's current and future interpretations of the Act's PSD provisions and EPA regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state PSD programs). Similarly, EPA approval also will have the effect of negating any interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretation and applicable policies. Of course, any fundamental changes in the administration of PSD would have to be accomplished through amendments to the regulations in 40 CFR 52.21 and 51.166, and subsequent SIP revisions.

Upon approval of the state's PSD SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon draft permits. Specifically, EPA will comment upon any failure to follow the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final PSD permit still does not reflect consideration of the relevant factors, EPA will deem the permit to be not in conformance with the PSD requirements of the Act and the State's SIP, and will consider appropriate enforcement action under sections 113 and 167 of the Clean Air Act to address the permit deficiency. However, except as to matters which could have been raised in the court of appeals upon promulgation of the PSD regulations or other final action of the EPA, any party which is the target of an enforcement action may seek judicial review of the EPA interpretation or policy in question in defending against the enforcement action. See section 307(b)(2) of the Clean Air Act.

Control Technology Review—The Federal regulations in 40 CFR 51.166(j) require applicants for PSD permits to consider and install the best available control technology (BACT) in construction of new sources or modification of existing major stationary sources. This provision of the Federal PSD regulations has been excluded from the TACB Regulation VI because the TACB claims that the Texas Clean Air Act and the existing State regulations have provisions for application of BACT as stringent as the Federal requirements in reviewing the permit applications. The EPA review of the Texas Clean Air Act and Regulation VI (Sections 116.3(a)(3) through 116.3(a)(5)) have

indeed revealed that the existing TACB permit requirements meet the provisions of the Federal PSD regulations specified in 40 CFR 51.166(j)(1) through 51.166(j)(3) with the exception of 40 CFR 51.166(j)(4). Section 40 CFR 51.166(j)(4) concerns permitting of and BACT analysis for phased construction projects. Lack of this provision in the State regulation requires the TACB to issue a new permit for each phase of a facility's phased construction project, or issue a single permit for all phases of a planned construction if a continuous construction program can be maintained without interruption and the entire project can be completed witin a reasonable time frame. Since in either case the applicants will be required to consider and apply the latest state-of-the-art BACT in order to secure PSD permits under the State regulations, exclusion of 40 CFR 51.166(j)(4) does not relax the Federal BACT application to phase construction projects in Texas.

In addition, the TACB adopted the definition of BACT by reference as found in 40 CFR 52.21(b)(12) (40 CFR 51.166(b)(1)). Adoption of this definition combined with the State's BACT regulations (as discussed above) fulfill the basic requirements of 40 CFR 51.166 (and Clean Air Act section 160–169) for the proposed approval of this SIP.

However, as noted above, EPA's approval of the Texas PSD SIP requires the state to follow EPA's statutory interpretations and applicable policies. With respect to BACT, EPA is proposing approval of the PSD SIP with the understanding that Texas will adhere to the following interpretations.

EPA has interpreted the BACT definition in section 169(3) of the Clean Air Act and 40 CFR 52.21(b)(12), which Texas has adopted by reference, as containing two core criteria. First, a PSD applicant must consider the most stringent control technology (and associated emission limitation) that is available in conducting a PSD analysis. Second, if the applicant proposes as BACT a control alternative that is less effective than the most stringent available, it must demonstrate to the State through objective indicators that case-specific energy, environmental, or economic impacts renders that alternative unreasonable or otherwise not achievable. The State must exercise independent judgment in reviewing that demonstration. These statutory interpretations are further amplified in case examples such as Honolulu Resource Recovery Facility (PSD Appeal No. 86–8; Remand Order of June 22, 1987); New Jersey Resource Recovery Facility, Pennsauken County, (PSD Appeal No. 88–6; Remand Order of November 10, 1988); and Columbia Gulf Transmission Company (PSD Appeal No. 88–11; Remand Order of June 21, 1989). In order to implement these statutory interpretations, the EPA has issued further guidance ("Improving New Source Review Implementation", dated December 1, 1987, A Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, to the Regional Administrators) calling on states to use a "top-down" approach to BACT analyses. In EPA's judgment, the core BACT requirements can be most efficiently satisfied if the BACT analysis considers first the most stringent—i.e., "top"—control alternative.

In addition, EPA has interpreted [See North County Resource Recovery Associates (PSD Appeal No. 85–2; Remand Order of June 3, 1986)] the "environmental impacts" component of the BACT definition as requiring the permitting authority, in establishing BACT for pollutants that are regulated under the Clean Air Act, to consider the environmental impacts of the various control alternatives on emissions of unregulated pollutants.

In support of the discussion above, the Executive Director of the TACB has submitted a letter, dated September 5, 1989, which commits the TACB to implement the PSD SIP approved program in compliance with all of the EPA's statutory interpretations and operating policies. Specifically, the TACB's letter states that (1) "* * * you may be assured that the position of the agency is, and will continue to be, to implement EPA requirements relative to programs for which we have received State Implementation Plan approval, and to do so as effectively as possible * * *", and (2) "* * * the TACB is committed to the implementation of the EPA decisions regarding PSD program requirements * * *". The EPA has evaluated the content of this letter and has determined that the letter sufficiently commits the TACB to carry out the PSD program in accordance with the Federal requirements as set forth in the Clean Air Act, applicable regulations, and as further clarified in the EPA's statutory and regulatory interpretations, including the proper conduct of BACT analyses. The EPA also interprets this letter as committing the TACB to follow applicable EPA policies such as the "Top-Down" approach. This letter will be incorporated into the SIP upon the final approval action.

2. Vessel Emissions—The EPA's 1980 PSD regulations included the dockside emissions of vessels as primary emissions in determining PSD applicability for a proposed source or modification. *See* 45 FR 52676, 52696, 52736 (August 7, 1980). The EPA subsequently decided to reconsider that decision, and in 1982 issued revised regulations excluding dockside vessel emissions.

See 47 FR 27554 (June 25, 1982). In 1984, the court of appeals vacated that portion of EPA's 1982 actions which excluded dockside vessel emissions for PSD applicability purposes (including the provision "* * * except the activities of any vessel * * *" in 40 CFR 51.166 (b)(6) [formerly designated as 51.24(b)(6)] and remanded the matter to EPA for further action. *NRDC* v. *EPA*, 725 F.2d 761 (D.C. Cir. 1984). The court's disposition had the effect of reinstating the dockside emission provisions of the 1980 regulations pending further rulemaking by EPA. *Id.* at 772. The EPA has not yet acted on the court's remand.

The TACB has declined to accept the EPA comments on the draft Texas SIP that recommended consistency between the State regulations and the court's decision. Instead, the Texas rules incorporate 40 CFR 51.166 (b)(6) as it currently appears in the Code of Federal Regulations. Accordingly, EPA proposes to retain PSD permitting authority over sources and modifications that would be affected by the dockside emissions of vessels. After the final approval of the Texas PSD program, the TACB will have to submit all such affected PSD applications to the EPA for review and issuance of the permits.

3. Air Quality Model—Section 40 CFR 51.166(1) of the Federal PSD regulations requires the applicants to use the EPA approved models for all PSD permitting purposes. The *Guideline on Air Quality Models (Revised 1986)* which contains the EPA approved models is incorporated by reference into the PSD regulations under Section 40 CFR 51.166(1). The TACB has excluded the Federal modeling provisions from its regulations; however, the State added an air quality modeling provision to its regulations under Regulation VI, Section 116.3(a)(13). The text of this language is provided below:

> * * * All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models and modeling procedures specified in the *EPA Guideline on Air Quality Models*, as amended, or models and modeling procedures currently approved by EPA for use in the state program, and other specific provisions made in the state PSD State Implementation Plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be

modified or another model substituted on (1) a case-by-case basis, or (2) a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval fo the Administrator of the EPA
* * *

The EPA has reviewed this added language and has determined that the TACB's modeling requirements specified in Regulation VI, Section 116.3(a)(13), are equivalent and consistent with the provisions of 40 CFR 51.166(1).

4. Public Participation—The State has excluded Section 40 CFR 51.166(q), PSD permit public participation, from its Regulation VI. However, the TACB has fulfilled the requirements for public participation by (1) the existing State regulations and (2) imposing additional procedures in the SIP supplement entitled "Revision to the Texas State Implementation Plan for Prevention of Significant Deterioration of Air Quality". Sections 116.10(a) and 116.10(c) of Regulation VI contain provisions that are equivalent to 40 CFR 51.166(q) except for several sections. These excepted sections are: 40 CFR 51.166(q)(1) that requires the reviewing agency to notify the applicants of the completeness or a deficiency in the application within a specified time period; 40 CFR 51.166(q)(2)(ii) that requires the State to include the degree of expected increment consumption (in ug/m^3) from the source or modification in the public notice; and 40 CFR 51.166(q)(2)(iv) that requires the State to send a copy of the public notice to any comprehensive regional land use planning agency and to any other affected agencies or Indian Governing Body. These requirements are covered under the SIP supplement which will become an enforceable part of the Texas PSD SIP when EPA finally approves this program.

5. Jurisdiction over Indian Lands—The Congress of the United States enacted "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act" on August 18, 1987. This Act established two Federally designated Indian lands in the State of Texas; namely "Title I—Ysleta del Sur Pueblo Restoration" and "Title II—Alabama and Coushatta Indian Tribes of Texas". Section 107(b) of Title I and Section 207(b) of Title II explicitly exclude the State's regulatory jurisdiction from the Federally designated Indian lands. Therefore, the State of Texas can not perform any air quality regulatory activities on these Indian lands. In addition, the State did not request any authority for Indian land nor did it protest the Federal authority when the EPA expressed its intention of retaining this authority in the PSD SIP comment letters to the TACB. Based on this statutory limitation, the EPA retains its authority for air quality regulatory and enforcement activities including issuance of PSD permits for sources located (or wanting to locate) on these Federally designated Indian lands. Questions, inquiries, and any other activities related to air quality planning and enforcement that affect Indian lands directly or indirectly should be referred to the EPA Region 6 Office at the address given in this notice.

6. Other Provisions—The EPA will retain authority for extension of the permits which were issued by the regional office before approval of this SIP. In response to this, the TACB has excluded 40 CFR 52.21(r)(2) from its Regulation VI. In addition, other sections of the Federal PSD regulations such as 40 CFR 52.21(s), 40 CFR 52.21(u), and 40 CFR 52.21(w) which are applicable only to the Federal agency are excluded from incorporation by reference. The plan requirements under 40 CFR 51.166(a) are addressed in the State SIP supplement.

7. New Source Review Visibility—On October 23, 1984 [49 FR 42670], EPA required those States that had not yet done so (including Texas) to submit State Implementation Plan (SIP) revisions for visibility protection by May 6, 1985. The State's plan had to contain a visibility monitoring strategy and visibility new source review (NSR) regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). Texas submitted its plan for NSR on December 11, 1985. EPA published a Notice of Delegation of Authority for Visibility NSR under the Federal Prevention of Significant Deterioration (PSD) program on November 4, 1986 (51 FR 40072). The October 26, 1987, submittal, which incorporated by reference the Federal PSD regulation, contained all of the visibility NSR requirements specified in 40 CFR 51.307. Therefore, the EPA is also proposing to approve the TACB's plan for protection of visibility in mandatory Federal Class I areas under the NSR program.

In summary, the TACB has adopted the Federal PSD regulations in 40 CFR 52.21 through incorporation by reference, but the State has excluded several sections of the Federal regulations. However, the State has argued that its existing regulations for new source review and the Texas Clean Air Act have provisions that fulfill the requirements of the excluded sections as effectively as the Federal regulations.

The EPA has reviewed and evaluated the TACB's existing SIP regulations, the PSD SIP submitted by the Governor of Texas, the TACB's commitment letter of September 5, 1989, and the Texas Clean Air Act. The EPA's preliminary determination is that the State's regulations, procedures, incorporation of the Federal PSD regulations, and the PSD commitment letter are adequate for authorizing the TACB to directly review the PSD permit applications, and issue and enforce the PSD permits in certain areas of the State. For the reasons discussed in this notice, the EPA will retain authority for reviewing, issuing, and enforcing the PSD permits on Indian lands and new or modification of major stationary sources which include emissions from docked vessels. Based on this evaluation, the EPA proposes to approve the Texas PSD SIP revision.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this proposed SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This proposed rulemaking is issued under the authority of sections 110, 160–169, and 301 of the Clean Air Act, 42 U.S.C. 7410, 7470–7479, and 7601.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide and Hydrocarbons.

Dated: October 20, 1989.

Robert E. Layton Jr., P.E.,

Regional Administrator.

[FR Doc. 89–29772 Filed 12–21–89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–06, Notice 6] RIN: 2127–AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses, and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend the existing requirements of Federal Motor Vehicle Safety Standard

No. 214, *Side Door Strength*, to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less. The standard, which currently applies to passenger cars only, specifies performance requirements to mitigate occupant injuries in side impacts. The standard requires each side door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. NHTSA believes that the proposed extension would result in about 110 fatalities and 950 fewer serious-to-critical injuries each year.

DATES: Comments must be received on or before February 20, 1990. This proposal if adopted as a final rule would become effective September 1, 1992.

ADDRESS: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

NHTSA's standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*. The standard specifies performance requirements for each passenger care side door to mitigate occupant injuries in side impacts. The standard seeks to do this by reducing the extent to which the side structure of a care is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. Since the standard became effective on January 1, 1973, car manufacturers have generally chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams.

NHTSA's analysis of real-world crash data has shown that the strengthening of passenger car side doors with the beams is effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard No. 214," (DOT HS 806-314) estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle side impact occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car side impact collisions.

During the past several years, NHTSA has been involved in a number of efforts to upgrade Standard No. 214, both in terms of developing new requirements for passenger cars and extending applicability of the existing requirements to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (light trucks, vans and MPV's, or "LTV's").

For passenger cars, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to add dynamic test procedures and performance requirements to Standard No. 214. The proposal would require an additional test in which a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. Newly developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis. The proposal would also require that the doors of the target car remain closed during the side impact, to reduce the number of persons that are ejected from a car through a door.

Also, on August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the side protection of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to extend side impact requirements to LTV's largely correspond to its efforts for passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31716) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. In summary, the ANPRM addressed: (1) extension to LTV's of Standard No. 214's existing requirements, i.e., measuring performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, corresponding to those addressed in the August 1988 ANPRM for passenger cars.

Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, NHTSA is the furthest advanced in analyzing the extension of Standard No. 214's existing requirements to these vehicles. The agency has decided to go forward with rulemaking on that issue separately, since addressing all of the potential requirements together could result in unnecessary delays and loss of safety benefits. The discussion of comments which follows focuses on those comments which specifically addressed extending Standard No. 214's existing requirements to light trucks.

Comments on the ANPRM

A number of manufacturers raised concerns about extending the existing requirements of Standard No. 214 to LTV's. General Motors (GM) questioned whether significant benefits would result from such extension. That company stated that while side beams are not used in trucks and MPV's, its tests show that the vehicles have good side impact performance. GM stated that in severe vehicle-to-vehicle tests of several of its vehicles, the integrity of the passenger compartment was not compromised.

Ford stated that the use of a beam in a door structure may not afford optimized occupant injury reduction in side impact collisions with fixed objects, and argued that research needs to be conducted in this area. That company stated that it anticipates that side door beams would be found to be appropriate only for those LTV's that have a seating height in the same range as passenger cars. Ford stated that most LTV's have a seating height higher than passenger cars, and that impacting cars would hit the rocker sill (the lower side structure of a vehicle at floor level) of LTV's, reducing the beneficial effect of the side door beams. That commenter also stated that statistics show side impact involvement to be low for LTV's, and that costs for some vehicles could be large. Ford also suggested that, in developing requirements to address side impacts with poles and trees, the agency should modify the existing Standard No. 214

requirements to include contact with the rocker and floor pan areas.

Chrysler stated that it does not believe that extending the existing requirements of Standard No. 214 to LTV's would have any meaningful benefits, because of the relative infrequency of serious injuries in these types of crashes, and the inherently higher sill height found in most LTV's. That company stated that the rate of occupants injured in side impacts each year is lower in these "noncomplying" LTV's than in passenger cars, all of which must comply. Chrysler also argued that the high sill height of many LTV's preclude effective placement of side door beams.

Toyota argued that since the side impact fatality rate for light trucks is little more than half of that of passenger cars, it believes that nothing should be proposed for LTV's until the agency resolves what further actions to take for passenger cars. That company also argued that applying the "steel cylinder" test criteria to light trucks would not make the testing repesentative of real-world side-impact crashes. With respect to addressing side impacts with poles and trees, Toyota noted that the current Standard No. 214 requirements specify that force is exerted from the bottom edge of the door window opening to five inches above the bottom edge door, while that company believes it is very rare in real-world crashes for objects to impact only the door. That commenter stated that such objects are in most cases higher than the vehicle and will, if struck, impact the vehicle from its rocker panel near the ground level to the roof.

Nissan argued that since the ground clearances, body structures and crash experiences of LTV's differ markedly from those of passenger cars, it believes that the current Standard No. 214 requirements would not be as effective for LTV's as they are for passenger cars.

Two trade associations, the National Truck Equipment Association (NTEA) and the Recreation Vehicle Industry Association (RVIA), expressed concern about extending the applicability of Standard No. 214 to LTV's in light of potential impacts on their members, which include final stage manufacturers and alterers of certified vehicles. According to NTEA, the truck industry in the 10,000 and under GVWR range is divided into two distinct segments: (1) the pickup trucks and vans produced annually by the major motor vehicle manufacturers in an assembly line process, and (2) the more than 50,000 trucks completed annually by the hundreds of small businesses in the truck body and equipment industry that are produced in two or more stages. NTEA stated that its members have substantial certification obligations for safety standards, which would increase if Standard No. 214 is extended to all LTV's. NTEA also stated that its members are typically small businesses which do not have the technical capacity or financial resources to crash test the countless varieties of custom made vehicles they produce, and urged that the agency not apply Standard No. 214 to trucks in the 10,000 pounds and under GVWR range which are not primarily used for the transportation of passengers.

RVIA, which represents over 650 manufacturers of recreation vehicles and their related suppliers, stated that included in its membership are more than 175 "van conversion" manufacturers, many of whom are small business entities, that customize van-type vehicles. RVIA argued that to require the strengthening of recreation vehicle and other LTV side doors with metal beams would be "regulatory overkill," and that a side door beam requirements is not necessary and would not be cost-beneficial. That commenter stated that these vehicles are stronger and heavier than passenger cars, their door sill height matches better with passenger car bumpers, and their seats are relatively higher so that their occupants are above the point of impact and are much less likely to be struck directly. RVIA also stated that many recreation vehicle manufacturers do not have sufficient financial resources for complex performance tests and other additional requirements for each design variation in vehicles they produce.

The Center for Auto Safety (CFAS) submitted a comment addressing the need for side protection standards that respond to occupant requirements in side impacts with fixed roadside objects. That commenter stated that in conducting tests for side impact standards, performance evaluations using piston-on-door pressure and moving barrier collision measures are inadequate for establishing crash protection for side impacts with rigid, non-yielding roadside fixed objects. CFAS stated that if NHTSA is willing to establish vehicle standards for side impacts with non-deformable objects, it must conduct crash tests with non-deformable objects.

The American Insurance Association submitted a comment in support of the ANPRM. That commenter stated that it was encouraged that NHTSA believes it may be possible to develop effective requirements to address thorax and pelvis protection, head injuries, ejections through windows and doors, and side impacts with poles, trees and other similar fixed objects. The American Insurance Association urged the agency to act swiftly to improve side impact protection for light trucks, vans and MPV's in these areas in addition to the extension of the current requirements of Standard No. 214.

Proposal

After considering the comments on the ANPRM, NHTSA has decided to proposed extending Standard No. 214's existing requirements to trucks, buses and MPV's with a GVWR of 10,000 pounds or less, effective September 1, 1992. The agency has tentatively concluded that the proposed requirements can result in significant safety benefits. As discussed below, NHTSA believes that the proposed requirements would result in about 110 fewer fatalities and 950 fewer serious-to-critical injuries each year. Total costs, including lifetime fuel penalty cost, are estimated at about $37 to $78 per vehicle, or roughly $185 to $391 million annually.

Standard No. 214 requires each door to meet minimum initial, intermediate and peak crush resistance requirements when a specified load is applied to the outer surface of the door in a laboratory test. The load is applied by means of a piston pressing a vertical steel cylinder against the middle of the door. The bottom of the cylinder is five inches above the lowest point of the door; the top of the cylinder extends above the bottom edge of the window opening by at least 0.5 inches. NHTSA believes that manufacturers would comply with the requirements by adding metal beams to the side doors of these vehicles, similar to the side door beams used in passenger cars.

NHTSA recognizes that new applications of current standards must be analyzed to determine the appropriateness of applying them to different vehicle types. One significant difference between passenger cars and many LTV's is that LTV's may have side doors that are not likely to have vehicle occupants sitting near them. The agency proposes to exclude such doors from the standard, since adding side beams to the doors would likely to be of little or no benefit. More specifically, the agency proposes to exclude: (1) any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and (2) any side door located adjacent to hardware for

installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1). (The term "outboard designated seating positon" is defined in 49 CFR Part 571.3.) NHTSA notes that, under the regulatory language proposed by this notice, the criteria for exclusion would apply to passenger cars as well as LTV's. The agency does not believe there is any reason not to apply the proposed criteria for exclusion to passenger cars. However, NHTSA is not aware of any current passenger cars that would be able to take advantage of the proposed criteria for exclusion.

NHTSA requests comments on the appropriateness of the proposed criteria for exclusion. One issue concerns the fact that some rear side doors of vans may not be excluded from the standard's coverage because a small portion of the front of that side door is adjacent to the rear of the front seat. Should such doors be included/excluded from the standard's coverage? Why? If such doors are to be excluded, how should the proposed criteria be modified? Another issue relates to the fact that some rear doors adjacent to aisleways in some vans may not be excluded from the standard's coverage because the seating positions on the other side of the aisleways might not be "outboard designated positions," because those aisle seats could be less than 12 inches from the side of the vehicle. As a general matter, the closer such aisle seats are to the side of the vehicle, the more likely side door beams could be of benefit in a crash. The agency requests comments on whether such doors should be included/excluded from the standard's requirements.

NHTSA also requests comments on whether any other doors, such as detachable doors, should be excluded from the standard's coverage, and why. The agency notes that some MPV's have doors that can easily be taken off and put on by vehicle occupants. These doors may be made of plastic fabrics and metal wire frames. The agency requests any commenters supporting additional exclusions to discuss what specific criteria should be used to define the doors to be excluded, and to address what design changes would be needed to meet the proposed requirements for such doors and whether excluding the doors would create an incentive for manufacturers to increase production of vehicles with the doors.

While NHTSA is proposing to extend Standard No. 214 to all trucks, buses and MPV's with a GVWR of 10,000 pounds or less, the agency is requesting comments on whether a more limited extension would be appropriate, in light of the alleged potential impacts on final stage manufacturers. A further discussion of this issue is provided below.

The basis for the agency's proposal is discussed in the remaining sections of this notice, which present a review of the fatality and injury experience in side impacts involving LTV's, the rationales supporting the proposed requirements, the estimated benefits of the standard, and the potential costs. A more detailed discussion of many of these issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice.

As indicated above, NHTSA stated in the August 1988 ANPRM that it is also considering developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars. The agency requests comments on whether, and how, the action it takes in that area would affect the commenters' views on this proposal.

The Safety Problem

The number of LTV occupant fatalities has been increasing during the 1980's, primarily due to the greatly increasing number of sales of these vehicles. From 1985 to 1988, annual LTV fatalities increased from 6,738 to 8,355. LTV occupant non-fatal injuries have also been increasing. For example, between 1985 and 1988, the number of such injuries increased from 583,000 to 850,000. Sales of LTV's increased from approximately 4.5 million vehicles in 1985 to 4.9 million vehicles in 1988. With record-breaking sales years in 1985, 1986, 1987 and 1988, and projected sales of 5.0 million vehicles per year into the future, these trends are expected to continue through the mid-1990's.

Side impacts are a significant cause of LTV occupant fatalities, accounting for about 18.5 percent of all LTV occupant fatalities. Between 1985 and 1988, total LTV fatalities in side impacts increased from 1,247 to 1,625, and estimated AIS 3–5 injuries increased from 4,750 to 7,300. LTV fatalities in single-vehicle side impact crashes increased from 546 to 717 between those years, and estimated AIS 3–5 injuries increased from 1240 to 1900. (The abbreviation "AIS" refers to Abbreviated Injury Scale, which is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. AIS 3–5 injuries are those which are serious-to-critical.)

As significant as side impacts are to LTV occupant fatalities, side impacts are an even greater source of passenger car occupant fatalities, accounting for 32 percent of such fatalities. As discussed in the PRIA, data indicate that LTV's are less involved in side impacts than passenger cars and, when they are involved, LTV occupants have fewer injuries than passenger car occupants. One likely reason why LTV occupants have fewer injuries in side impacts is that light truck occupants, in standard size pickups and vans, are seated higher than the point where striking passenger cars impact the vehicle.

NHTSA is concerned about the side impact problem for both passenger cars and LTV's and, as indicated above, is addressing the problem in rulemaking for all of these vehicles. The fact that the side impact problem may be greater for passenger cars than for LTV's does not obviate the seriousness of the problem for LTV's, or the desirability of taking action now to address the problem.

While, as discussed below, the expected benefits of extending Standard No. 214 to LTV's are primarily related to single-vehicle crashes, including side impacts with narrow, rigid objects such as poles and trees, NHTSA recognizes that the requirements in question were not originally tailored to that specific crash mode. The agency notes that this proposal does not preclude the possibility that the agency will later propose additional LTV requirements focusing on side impacts with narrow, rigid objects. Currently, the Federal Highway Administration is conducting 30 mph, broadside crash tests against various breakaway support structures. Since the development of such additional requirements would likely take a considerable period of time, the agency does not wish to delay this rulemaking while it addresses that issue.

Benefits

NHTSA believes that extension of Standard No. 214's existing requirements to LTV's would likely result in significant safety benefits. The purpose of the requirements is to minimize the safety hazard caused by intrusion into the passenger compartment in a side-impact collision. In order to meet the requirements, manufacturers must provide stronger side doors. Manufacturers have met the current standard for passenger cars by introducing a longitudinal beam in the middle of each door, and the agency believes that manufacturers would

comply with the proposed requirements for LTV's in the same manner.

As indicated above, in November 1982, NHTSA published an evaluation of the side impact standard for passenger cars. The report concluded that single vehicle side impact occupant fatalities were reduced by 14 percent. For side impacts with fixed objects, the effectiveness was 23 percent. The report concluded that the standard did little to reduce fatalities in multi-car side collisions. The evaluation also found that the risk of occupant hospitalization or fatality in side impacts was reduced by 25 percent in single-vehicle crashes and by eight percent in multi-vehicle crashes.

The evaluation also looked at the effect of the standard on reducing ejections, the benefits of which are reflected in the above numbers. The report found that the standard reduced occupant ejection through doors by 40 to 60 percent in single-vehicle crashes, and by 10 to 50 percent in multi-vehicle crashes. The evaluation concluded that the standard reduced the incidence of doors opening in crashes by 20 to 40 percent in single-vehicle crashes, and by 10 to 30 percent in multi-vehicle crashes.

NHTSA believes that the benefits of Standard No. 214 are primarily attributable to two things: (1) the added side door beam helps to make a pole, tree, guardrail or other fixed object slide by the occupant's position and keeps it from intruding in and hitting the occupant, and (2) the strengthened striker/latch area of the door helps reduce ejections.

NHTSA notes that two injury mechanisms are likely to occur in a typical side impact with a fixed object. First, the occupant strikes the door. This occurs before door intrusion by the fixed object, and added padding is beneficial to reducing the potential for injury at this time. Second, the intruding object may strike the occupant. A side door beam reduces the possibility of this second injury mechanism from occurring.

NHTSA's PRIA estimates that adding side door beams to LTV's would result in about 110 fewer fatalities and 950 fewer AIS 3–5 injuries each year. The breakdown for the estimated benefits, between single vehicle and multi-vehicle crashes and by seating position, is as follows:

TABLE 1—ESTIMATED BENEFITS OF SIDE DOOR BEAMS IN LTV'S

	Single Vehicle Crashes		Multi-Vehicle Crashes	
	Front Seat	2nd Seat	Front Seat	2nd Seat
Fatalities	96 to 112	4	0	0
AIS 3-5 Injuries	418 to 504	37	381 to 459	34

The PRIA's estimate of benefits uses projected 1994 injuries and fatalities as a baseline. The range of benefits assumes different sets of assumptions regarding front seat outboard restraint types and usage. The high end of the range is based on an assumption of 23.3 percent belt usage for manual belts in all seating positions—the current level. The results from a second set of restraint use assumptions, 40 percent manual belt use for front seat outboard positions, fell within the range shown. The low end of the range is based upon a set of assumptions that look at the potential long range impacts of having automatic restraints in all light trucks. It assumes 50 percent of light trucks have air bags, with 40 percent manual lap/shoulder belt use, and 50 percent of the light trucks have automatic belts, with 80 percent usage of automatic belts.

In calculating benefits, the PRIA assumes that the effectiveness of side beams for LTV's involved in side-impact crashes is the same as for passenger cars. Since LTV's are not currently equipped with side door beams, it is not possible to do an evaluation of their real-world effectiveness. Since light truck occupants generally sit higher than passenger car occupants, they are presumably less vulnerable in multi-vehicle collisions. In side impacts with poles and trees, however, the objects struck are typically higher than either a passenger car or LTV. The agency believes that the effectiveness of side door beams for LTV's is similar to that of passenger cars because: (1) Many LTV's are exposed to the same traffic environment as cars (and even greater similarity can be expected in the future, as LTV sales continue to rise), (2) Side door beams are most effective in reducing occupant injuries in single-vehicle crashes, when the mass and height of a vehicle have little effect (unless the vehicle is involved in a rollover), and (3) The doors currently used on LTV's are similar to the doors used on passenger cars prior to the issuance of Standard No. 214. In proposing to extend the standard's requirements to doors on LTV's, NHTSA expects safety benefits comparable to passenger cars. The agency invites comments on this point.

NHTSA also believes that installing side beams to LTV's could help reduce ejections in rollover or other non-side-impact crash modes, although it has not attempted to quantify the potential benefits in this area.

Costs

NHTSA does not believe that any current LTV's meet the requirements of Standard No. 214. Under a NHTSA contract, five 1987 LTV's were tested to Standard No. 214's requirements for passenger cars. (See Docket 88-06, Notice 4, Item 7.) The LTV's included a Dodge Dakota, Ford Bronco, Ford F–150, Nissan Pathfinder and Suzuki Samurai. None of the vehicles met the requirements. As discussed above, if Standard No. 214 were extended to LTV's, NHTSA believes that manufacturers would meet the standard's requirements by adding a longitudinal beam in the middle of each door, in the same manner as for passenger cars.

The PRIA provides cost estimates for extending Standard No. 214 to LTV's based upon two reports which give significantly different answers. The first report is the agency's November 1982 evaluation of Standard No. 214. The second is a report "Estimate for Incorporating FMVSS 214 Performance Requirements in Light Trucks and Multipurpose Vehicles," which was prepared for NHTSA by Mobility Systems and Equipment Company, June 1988.

In using the November 1982 evaluation, the PRIA assumed that cost and weight effects for upgrading passenger car doors could be applied to LTV doors of similar size. Under this methodology, the estimated cost and weight effects of adding side door beams to LTV's (excluding added fuel costs and possible secondary weight costs) are as follows:

TABLE 2—ESTIMATED COST AND WEIGHT EFFECTS OF SIDE DOOR BEAMS IN LTV'S BASED ON 1982 EVALUATION

[Excludes Fuel Costs and Secondary Weight Costs]

Vehicle class	1988 sales	Percent	Cost per vehicle	Weight per vehicle (lbs.)
Pick-up trucks	2,640,622	53.4	$20.58	13.0
Vans	1,321,001	26.7	37.75	28.4
4-door others	273,733	5.5	39.16	24.8
2-door others	709,429	14.4	34.34	30.8
Total	4,944,785	100.0	[1] 28.18	[1] 20.3

[1] Average.

The report by Mobility Systems found much lower costs for side door beams. The report provided weight and cost estimates for two vehicles, a 1987 Suzuki Samurai and a 1987 Dodge Dakota. Using the Mobility Systems report as a foundation, and adding cost and weight estimates for pillar reinforcements which were not included in that report, the PRIA provides the following estimates of the cost and weight effects of adding side door beams to LTV's (excluding added fuel costs and secondary weight costs):

TABLE 3.—ESTIMATED COST AND WEIGHT EFFECTS OF SIDE DOOR BEAMS IN LTV'S BASED PRIMARILY ON MOBILITY SYSTEMS REPORT

[Excludes Fuel Costs and Secondary Weight Costs]

Vehicle class	1988 sales	Percent	Cost per Vehicle	Weight per Vehicle (lbs.)
Pick up trucks	2,640,622	53.4	$12.35	12.4
Vans	1,321,001	26.7	20.93	24.7
4-door others	273,733	5.5	21.63	21.8
2-door others	709,429	14.4	19.22	26.6
Total	4,944,785	100.0	[1] 16.15	[1] 18.2

[1] Average.

The PRIA uses the two methodologies as the basis for a range of potential costs. Thus, the average cost per LTV of adding side door beams is estimated to range from $16.15 to $28.18.

In estimating total cost impacts, the lifetime fuel costs of carrying the extra weight of the side door beams must also be considered. Taking fuel costs into account, the PRIA provides the following estimates of total vehicle costs:

TABLE 4.—TOTAL VEHICLE COSTS OF ADDING SIDE DOOR BEAMS (INCLUDES LIFETIME FUEL PENALTY COST—PRESENT VALUE, 10 PERCENT ANNUAL DISCOUNT RATE—WITHOUT SECONDARY WEIGHT)

Vehicle class	Incremental weight per vehicle (lbs.)	Total per vehicle cost
Pickup trucks	12.4–13.0	$26.51 to 35.42
Vans	24.7–28.4	49.12 to 70.16
4-door others	21.8–24.8	46.52 to 67.47
2-door others	26.6–30.8	49.58 to 69.49
Sales weighted avg.	18.2-20.3[1]	36.93 to 51.35

[1] A weight increase of this magnitude would reduce measured fuel economy by about 0.045 to 0.090 mpg, depending on whether acceleration capability is maintained.

Another possible cost relates to secondary weight. Secondary vehicle weight refers to weight increases in other parts of the vehicle which might be made to compensate for the additional "primary" weight, i.e., the weight of the side door beams. For example, these secondary weight increases could include increases in vehicle structure to maintain load-carrying ability. To illustrate the potential impact of secondary weight, the PRIA calculates costs using a theoretical weight factor of 0.7 pounds of secondary weight for each pound of primary weight that is added to the vehicle. The resulting estimates of total vehicle costs are as follows:

TABLE 5.—TOTAL VEHICLE COSTS OF ADDING SIDE DOOR BEAMS (INCLUDES LIFETIME FUEL PENALTY COST—PRESENT VALUE, 10 PERCENT ANNUAL DISCOUNT RATE—WITH SECONDARY WEIGHT)

Vehicle class	Incremental weight per vehicle (lbs.)	Total per vehicle cost
Pickup trucks	21.1–22.1	$42.88 to 52.54
Vans	42.0–48.3	81.66 to 107.59
4-door others	37.1–42.2	75.31 to 100.22
2-door other	45.2–52.4	84.57 to 110.13
Sales weighted avg.	30.9–34.5	60.99 to 76.13

[1] A weight increase of this magnitude would reduce measured fuel economy by approximately 0.07 to 0.13 mpg, depending on whether acceleration capability is maintained.

The above costs may be overstated for vans, since they include the costs of a rear side door for these vehicles. As indicated above, NHTSA is proposing to exclude from the requirements of the standard those LTV side doors which would not likely have anyone sitting near them. The agency does not have an estimate of how many van rear side doors would be excluded from the standard's requirements under the proposal. Assuming that a van's rear side door is excluded from the standard's requirements, the total cost (including added fuel but without secondary weight) of adding side door beams to the van would be $22.62 to $34.75 less than the estimate provi led

above. The total cost, with secondary weight, would be $38.80 to $55.06 less than the estimate provided above. NHTSA requests comments on how many van rear side doors would be included/excluded under the proposed requirements.

The cost of conducting a Standard No. 214 compliance for passenger cars is about $1,600. NHTSA believes that the same cost would apply to LTV's.

Final Stage Manufacturers

There is a specialized class of small businesses involved in the final stage manufacture of a vehicle manufactured in two or more stages, and/or in the conversion or alteration of new vehicles. Under NHTSA's certification regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that modifies or converts a previously certified new vehicle before its first sale to a consumer is a vehicle alterer under NHTSA's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. Throughout the rest of this preamble, the term "final stage manufacturers" is used to refer to both final stage manufacturers and alterers.

The Standard No. 214 compliance test is a destructive, whole system test, which could be difficult and/or expensive for many final stage manufacturers to conduct, especially if they had to conduct such testing on many different types of vehicles. However, NHTSA believes that the vast majority of final stage manufacturers would have available means to certify compliance that would not require testing. NHTSA's regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what limitations must be observed for the completed vehicle to comply with safety standards. The final stage manufacturer can then base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer. Since the truck or van chassis purchased by final stage manufacturers generally have side doors, and the final stage manufacturers generally do not change the side doors or structure supporting the side doors, NHTSA believes that certification with the proposed requirements could be based on the incomplete vehicle manufacturer's certification. NHTSA also notes that if a final stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid having to comply with the standard's requirements by not installing a seat (or hardware for a seat) adjacent to the door.

NHTSA is aware that some final stage manufacturers, including some manufacturers of motor homes, build their own vehicle body structures, which include side doors. These manufacturers are generally larger than most final stage manufacturers, and have greater engineering and testing expertise. The agency does not believe that the proposed requirements would be unduly burdensome to these manufacturers.

NHTSA has tentatively concluded that the proposed requirements would not result in any significant burdens to final stage manufacturers. The agency requests comments on this issue. Depending on the comments, NHTSA may consider extending the standard on more limited basis in a final rule, e.g., limiting application of the standard to vehicles with a GVWR or 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, and/or excluding certain vehicles such as motor homes. NHTSA requests that any commenters supporting a more limited extension specifically discuss the precise problem faced by final stage manufacturers, i.e., why, and for which vehicles, they are (1) unable to rely on the incomplete vehicle manufacturers' certification and (2) are unable to conduct (or sponsor) the necessary testing or engineering analysis to certify compliance, and how any recommended criteria for limiting the standard's applicability would solve the purported problem.

Leadtime

As discussed above, NHTSA believes that manufacturers could comply with the proposed requirements by adding side door beams to the side doors of LTV's, similar to those used in passenger cars. Since manufacturers have considerable experience in meeting Standard No. 214's requirements for passenger cars, NHTSA believes that a leadtime of two years would be sufficient to design, tool and test the necessary modifications. The agency requests comments on this issue. NHTSA requests that any commenters supporting a leadtime longer than two years address whether such longer leadtime is needed for all vehicles or whether the proposed requirements could be phased in for some vehicles at an earlier time.

Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive order 12291, and significant with the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Preliminary Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The primary cost effect of the proposed requirements would be on incomplete vehicle manufacturers, which are not small entities. Although many final stage manufacturers are small businesses, NHTSA estimates that the vast majority of those businesses would not be significantly affected by the proposed requirements. The impacts on small businesses are discussed briefly below and in more detail in the agency's preliminary regulatory impact analysis.

As discussed earlier in this notice, since the truck or van chassis purchased by final stage manufacturer generally have side doors, which are not changed by the final stage manufacturer, certification with the proposed requirements can easily be based on the incomplete vehicle manufacturer's certification. Also, if a final stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid having to comply with the proposed requirements by not installing a seat (or hardware for a seat) adjacent to the door.

A small number of final stage manufacturers build their own vehicle body structures, which include side doors. These manufacturers are generally larger than most final stage manufacturers, and have greater engineering and testing expertise. The agency does not believe that the proposed requirements would have a significant impact on these manufacturers.

Small organizations and governmental units should not be significantly affected since the potential cost impacts associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking

action for the purposes of the National Environmental Policy Act. The addition of side door beams to LTV's would result in increased material usage by manufacturers. There could also be increased material usage associated with possible secondary weight. The added weight associated with the rulemaking could reduce measured fuel economy by 0.045 to 0.13 mpg, depending on whether acceleration capability is maintained and on whether secondary weight is added. Such a reduction in fuel economy would result in a very slight increase in gasoline consumption. After considering the potential impacts of the proposed requirements, the agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed requirements do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified under receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.214 [Amended]

2. S2 would be revised to read as follows:

S2. *Application.* This standard applies to passenger cars and, effective September 1, 1992, to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

3. S3 would be revised to read as follows:

S3. *Requirements.* (a) Except as provided in paragraph (b) of this section, each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress are tested according to S4.

(b) A vehicle need not meet the requirements of this standard for:

(1) Any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and

(2) Any side door located adjacent to hardware for installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1).

Issued on December 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29771 Filed 12-19-89; 2:00 p.m.]

BILLING CODE 4910-59

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1057 and 1058

[Ex Parte No. MC-41 (Sub-No. 1)]

RIN 3120-AB 59

Identification of Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of time to file comments.

SUMMARY: By petition filed December 4, 1989, the American Trucking Associations (ATA), Regular Common Carrier Conference (RCCC), the Interstate Truckload Carriers Conference (ITCC), and the National Tank Truck Carriers, Inc., (NTTC) (hereafter "petitioners"), request a 60-day extension of time from December 29, 1989 to February 28, 1990, for filing comments. Petitioners state that extension is necessary to permit their motor carrier members to carefully consider the proposal at the ATA and ITCC Executive Committee meetings on January 29–31, 1990 and the RCCC meetings on February 12–15, 1990, and to prepare a reasoned response. Petitioners have not shown good cause for a 60-day extension. However, preparation of a reasoned response should be possible with a twenty day extension. Accordingly, a 20-day extension will be granted. The proposed rule on elimination of vehicle identification regulations was published on November 29, 1989 (54 FR 49104).

DATE: Comments are due on January 18, 1990.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC-41 (Sub-No. 1) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: John W. Fristoe (202) 275–7844 or Roy M. Wilkins (202) 275–7452 (TDD for hearing impaired (202) 275–1721).

Decided: December 18, 1989.

By the Commission, Chairman Gradison.

Noreta R. McGee,

Secretary.

[FR Doc. 89–29731 Filed 12–21–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on Proposed Threatened Status for Spiraea virginiana (Virginia Spiraea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the public comment period on the proposed determination of threatened status for *Spiraea virginiana* is reopened until February 7, 1990.

DATES: Comments from all interested parties will be accepted until February 7, 1990. Requests for public hearings must be received by January 24, 1990.

ADDRESS: Comments and materials regarding this proposed rule should be sent to the Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, Suite 322, 315 S. Allen Street, State College, Pennsylvania 16801. Comments and materials received will be available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see **ADDRESS** section), 814/234–4090.

SUPPLEMENTARY INFORMATION:

Background

Spiraea virginiana, a shrub belonging to the rose family, is found along scoured sections of high gradient streams in West Virginia, Virginia, Tennessee, North Carolina, and Georgia. Presently 18 populations are know and most of these have less than 50 plants. Human disturbance and competition from both native and introduced woody plants threaten most populations. In addition, field observations suggest problems with reproduction.

The proposed rule was published on July 21, 1989 (54 FR 30577). During the first public comment period, which ended on September 19, 1989, copies of the proposed rule and letters soliciting comments were sent to appropriate State Agencies, county governments, Federal agencies, scientific organizations, and other interested parties. The comment period is reopened to allow for the publication of required newspaper notices.

Author

This notice was prepared by Anne Hecht, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: December 15, 1989.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 89–29726 Filed 12–21–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

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

Animal and Plant Health Inspection Service

[Docket No. 89-208]

Guatemala MOSCAMED Program Environmental Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental analysis for the Guatemala MOSCAMED Program. We are requesting public comment on the draft environmental analysis, and advising that a public meeting will be held to promote public involvement in the development of the final environmental analysis.

DATES: Consideration will be given only to comments received on or before February 22, 1990. The public meeting will be held on January 22, 1990, in Washington, DC.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 89-208. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Indpendence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The draft environmental analysis may also be reviewed at this address. A copy of the draft environmental analysis may be obtained by writing to Michael T. Werner at the Hyattsville address listed above.

The public meeting will be held in the Jefferson Auditorium, South Building, 14th Street and Independence Avenue SW., Washington, DC, on January 22, 1990, from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8565.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared a draft environmental analysis for the Guatemala MOSCAMED (Medfly) Program. This notice requests public comment on the draft environmental analysis, and advises that a public meeting will be held to obtain additional public input on the draft environmental analysis. This process will allow public involvement in the development of the final environmental analysis for the Guatemala MOSCAMED Program.

Background

The Mediterranean fruit fly or Medfly ("Moscamed" in Spanish), *Ceratitis capitata* (Weidemann), is a major pest of agriculture throughout many parts of the world. Originally native to Africa, it now occurs in areas of Africa, the Mediterranean, Europe, Oceania, South America, Central America, and Hawaii. The Medfly has been introduced to the U.S. mainland intermittently since its initial introduction in 1929; however, eradication programs have prevented it from becoming established here. From 1929 to 1986, State and Federal expenditures for eradication programs on the U.S. mainland totaled nearly $258 million.

The Medfly became established in Costa Rica in 1955. By 1977, the Medfly had expanded its range from its original point of introduction to southern Mexico. In 1977, the Governments of the United States, Guatemala, and Mexico initiated a cooperative program known as MOSCAMED to eradicate to Medfly from Mexico and Guatemala and halt its northern spread. Beginning in Mexico in 1979, the MOSCAMED program used a combination of malathion bait spray, sterile Medflies released into the wild populations, and regulatory procedures in its eradication efforts. In 1982, Mexico declared the Medfly eradicated from its territory, and the eradication effort was extended into Guatemala.

Alternatives

The following program alternatives are discussed in the draft environmental analysis: (1) No action, (2) Isthmus of Tehuantepec stable barrier zone (Mexico), and (3) eradication of the Medfly from Guatemala.

Control method alternatives identified and discussed in the draft environmental analysis include: (1) No action, (2) sterile insect technique, (3) chemical control, (4) cultural control, (5) regulatory control, (6) integrated control, (7) biological control, and (8) other miscellaneous controls.

The preferred program alternative, eradication of Medfly from Guatemala, would use proven control technologies in a systems approach, allowing selection in control methodologies which are environmentally sound and appropriate for existing conditions and treatment sites.

Major Issues

Following are some of the major issues discussed in the draft environmental analysis:

(1) Impacts of the alternatives on the biological environment, including target and nontarget species.

(2) Impacts of the alternatives on the physical environment, including soil, water quality, and air quality.

(3) Impacts of the alternatives on the human environment, especially health and safety, culture, and economy. (The draft environmental analysis incorporates by reference a draft economic analysis, also available for public review.)

Public Meeting Procedures

A representative of the Animal and Plant Health Inspection Service will preside at the meeting, where comments will be heard concerning any issue that would be relevant for the final environmental analysis. Interested persons may appear and be heard in person, by attorney, or other representative. The meeting will begin at 9 a.m. and end at 4 p.m., local time; however, the meeting may end earlier if all persons desiring to speak have been heard. Persons who wish to speak should register at the desk located at the meeting entrance. Pre-meeting registration will be conducted at the

meeting site from 8 a.m. to 9 a.m. on the meeting date. Registered persons will be heard in the order of registration. Unregistered persons who wish to speak will be afforded the opportunity after the registered persons have been heard. Since the time for each speaker may be limited, speakers are encouraged to submit written comments and to summarize these comments at the public meeting.

Preparation of the Final Environmental Analysis

We will consider all comments received from reviewers of the draft environmental analysis for the Guatemala MOSCAMED Program. Following the 60-day comment period, any necessary revision will be made in the analysis, and a final environmental analysis will be prepared. A notice announcing the availability of the final environmental analysis will be published in a subsequent **Federal Register** notice.

Done in Washington, DC, this 14th day of December 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-29774 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Sunflower Seed, Oil Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: On December 22, 1989, the Federal Grain Inspection Service (FGIS) will implement an updated calibration for Nuclear Magnetic Resonance instruments used to determine oil content in sunflower seed. This calibration will incorporate data from 5 previous crop years.

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628-S, Box 96454, Washington, DC 20090-6454; telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: An updated sunflower seed oil calibration for Nuclear Magnetic Resonance (NMR) instruments will be implemented on December 22, 1989 at FGIS field offices and official agencies. A technical review of the updated calibration indicates that the effect on the system will be an increase in the reported oil content for official certification by an average of 0.28 percent when the sunflower seed is adjusted to a 10 percent moisture basis. Based upon a 1989 crop survey, this calibration change is determined necessary. This calibration was developed with the assistance of USDA's Agricultural Marketing Service, Statistics Branch.

FGIS implemented a revised quality control program in February 1989 to improve the assurance of accurate measurements of oil in sunflower seed. In addition, the existing calibration was implemented on February 22, 1989, when it was considered that variety and growing conditions had resulted in changes in the chemical structure (degree of saturation) of the oil from the 1988 harvest of sunflower seed. At that time, it was indicated that a complete review of the calibration procedure would be conducted and, if needed, a revised calibration and control process would be implemented.

To assure that sunflower seed oil in future sunflower crops is measured accurately, FGIS will use a 5 year data average to calibrate NMR instruments for measuring oil content in sunflower seed. Future calibration adjustments, if needed, will generally be implemented on or about September 1, prior to the harvest of sunflower seed in the United States. In some instances, calibration adjustments may be necessary after the beginning of harvest, and such adjustments will be made accordingly.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 18, 1989.

D.R. Galliart,

Deputy Administrator.

[FR Doc. 89-29775 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Commodity Letter of Credit (CLOC) Program; Meeting Announcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting to discuss proposed modifications to the Commodity Letter of Credit (CLOC) Program is scheduled for Thursday, January 18, 1990. The CLOC Program was initiated in 1981 as a demonstration project to test alternatives to commodity donation in the National School Lunch Program. The meeting will serve as an open forum to solicit recommendations from the general public for modifications to the CLOC Program.

DATE: The meeting will take place on Thursday, January 18 from 9 a.m. to 5 p.m.

ADDRESS: The meeting will be held in the Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302 in the fourth floor conference room.

FOR FURTHER INFORMATION CONTACT: John Endahl, Office of Analysis and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3115.

SUPPLEMENTARY INFORMATION: Section 103 of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) authorizes the extension of the Cash/CLOC Program through September 30, 1992. The joint statement issued by the Congress in conjunction with the Act's passage encourages the Secretary to review current CLOC procedures and make modifications to the program that may assist the Department in meeting its mandate to support domestic agricultural markets. The purpose of this meeting is to give the U.S. Department of Agriculture the opportunity to seek the advice of organizations, interest groups and industry representatives as well as the general public prior to modifying current CLOC programs. Topics to be discussed during the meeting include:

(1) The type of products that may be purchased with Commodity Letters of Credit (CLOCs);

(2) The timing of CLOC purchases;

(3) Administrative issues with regard to CLOCs such as allocation of funds and monitoring of "Buy America" provisions;

(4) The effect of the CLOC Program on other USDA Food Donation Programs and the existing commodity distribution network; and

(5) The effect of CLOCs on the Department's ability to respond to national emergencies.

The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to John Endahl, 3101 Park Center Drive, room 206, Alexandria, Virginia 22302. Please notify John Endahl of attendance prior to meeting. Comments may be sent to John Endahl before or within one week of the meeting.

Dated: December 19, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-29803 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Divide Creek Unit Coal-Bed Methane Development Environmental Impact Statement; White River National Forest, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement on a proposal to drill, complete, and produce coal-bed methane gas wells in the Divide Creek Unit in Garfield and Mesa Counties, Colorado.

DATE: Comments concerning the scope of the analysis should be received in writing by February 28, 1990.

ADDRESS: Send written comments to Terry K. Wood, District Ranger, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado 81650.

FOR FURTHER INFORMATION CONTACT: Gary Osier, Forester, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado 81650, phone: (303) 625–2371.

SUPPLEMENTARY INFORMATION: The proponent proposes to drill, complete, and produce 66 coal-bed methane gas wells within the Divide Creek Unit. In 1990 thirty eight gas wells and associated facilities would be developed (6 wells on Bureau of Land Management land-BLM); in 1991 twenty eight gas wells and associated facilities would be developed. There are ten existing coal-bed methane gas wells on Forest Service land. The Divide Creek Unit has been developed under a Federal lease for conventional natural gas since 1938. Known interested publics will be notified in writing or in person. The Forest Service will also make efforts to contact the general public through meetings, etc.

Thus far the following concerns have been identified: Impacts to wetland/riparian habitats, water resources, fish and wildlife, effects on "sensitive lands" from a soil and landform erosion standpoint, impacts on air quality, roads/transportation systems, and cumulative impacts.

The range of possible alternatives which have been identified by the Forest Service are as follows: 1. No Action—Allow no gas activity in the Divide Creek Unit; 2. Staged Development—There are several possibilities of staged development over a period of time; 3. Total Development (Proponent's Proposal)—This alternative assumes 2 wells per section within the Divide Creek Unit and reflects the current state approval granted to the proponent for wells on a 320 acre basis. Based on approximately 40 sections included in the unit (on BLM and Forest Service lands), this would result in up to 80 wells being analyzed including the existing 10 wells.

Based on current knowledge the following permits and/or licenses are required: an approved Application for Permit to Drill—BLM; an approved Surface Use Plan—Forest Service; Sundry Notices—BLM; a water disposal permit—Environmental Protection Agency and the State of Colorado; review and approval—State of Colorado; a Land Use Permit—Garfield and Mesa Counties; and a Road Damage Bond and Permit—Garfield County.

The lead agency is the Forest Service, USDA. The Bureau of Land Management, USDI is a cooperating agency. The Forest Service is also working with the Colorado Division of Wildlife and Garfield and Mesa Counties.

Comments may be sent in writing to Terry K. Wood, District Ranger, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado 81650.

The Draft Environmental Impact Statement is expected to be published for public review in March, 1990. The Final Environmental Impact Statement is expected to be published in May, 1990.

The Forest Service will seek comments on the Draft Environmental Impact Statement for a period of 45 days after publication of the Draft Environmental Impact Statement. The Forest Service will summarize and respond to the comments in the Final Environmental Impact Statement.

The Responsible Official is Thomas A. Hoots, Forest Supervisor, White River National Forest, 900 Grand Ave., P.O. Box 948, Glenwood Springs, Colorado 81602.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Dated: December 13, 1989.

Thomas A. Hoots,

Forest Supervisor.

[FR Doc. 89–29805 Filed 12–21–89; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for specified farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Hannah D. Atkins, Secretary of State, to include the following products produced in that State:

Ducks
Geese
Ostriches
Emus
Pheasants
Chinchillas
Silage
Sorghum, forage
Vetch
Flaxseed
Sunflower seeds
Safflower seeds
Guar
Millet
Green beans

Peppers
Spinach
Mustard greens
Lettuce
Swiss chard
Turnip greens
Collard greens
Pumpkins
Almonds
Mung beans
Grass roots
Bedding plants
Potted plants & flowers
Bees wax
Pollen

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 14, 1989.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 89-29773 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final results of an administrative review of an antidumping duty order made by the International Trade Administration, Import Administration, respecting Certain Dried Heavy Salted Codfish from Canada. The panel review is terminated by order of the panel, effective December 18, 1989, based upon a motion consented to by all the participants.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Under chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") an independent binational panel may be convened to review final determinations in antidumping and countervailing duty cases involving imports from the other country.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212).

A Request for Panel Review of the final results of an administrative review of an antidumping duty order made by the International Trade Administration, Import Administration, respecting Certain Dried Heavy Salted Codfish from Canada was filed on April 26, 1989. A panel was established pursuant to the *Article 1904 Panel Rules* to review whether the final determination conformed with the antidumping duty law of the United States.

On November 27, 1989, the Department of Commerce (the Department) published a notice revoking the antidumping duty ordered on Dried Heavy Salted Codfish from Canada (54 FR 48794). Accordingly, pursuant to Rule 73 of the Rules, the Department and the Complainant jointly filed on December 13, 1989, a Notice of Motion to dismiss the panel review. On December 15, 1989, the panel issued an order dismissing the panel review.

Under Rule 80(a), when all participants consent to an order dismissing panel review, the order becomes effective on the day after the order of the panel is issued. Accordingly, the order dismissing the panel review herein is effective December 18, 1989.

Dated: December 12, 1989.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 89-29756 Filed 12-21-89; 8:45 p.m.]

BILLING CODE 3510-GT-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in the panel review of a final determination made by the International Trade Administration, Import Administration respecting Red Raspberries from Canada filed by Clearbrook Packers, Inc. (Clearbrook), Marco Estates Ltd./ Landgrow Packers (Marco), and Mukhtiar & Sons Packers, Ltd. (Mukhtiar).

SUMMARY: The Panel found that: (1) the International Trade Administration (ITA) finding that fresh market raspberries are not such or similar merchandise was supported by substantial evidence on the record and that, because Marco had no home market sales of merchandise covered by the antidumping order, constructed value was the appropriate basis for calculating Marco's foreign market value; and (2) because ITA did not provide an adequate explanation of its reasons for rejecting Mukhtiar's and Clearbrook's home market sales of red raspberries as a basis for calculating foreign market value, the panel was unable to apply the substantial evidence standard to determine the legality of that conclusion.

Copies of the complete decision, including all reasoning, may be obtained from the United States Secretary, FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by an independent binational panel. The panel reviews final determinations to determine whether they are consistent with the antidumping duty or countervailing duty law of the country that made the determination.

Under Article 1904 of the United States-Canada Free-Trade Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter was conducted in accordance with these Rules.

On March 15, 1989, a Request for Panel Review of the final determination made by the ITA respecting Red Raspberries from Canada was filed by Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow Packers, and Mukhtiar & Sons Packers, Ltd., pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. A panel was

convened in accordance with the Rules and oral arguments were presented on all issues on October 20, 1989. The panel decision is given below. Copies of the complete decision, including all reasoning, may be obtained from the United States Secretary, FTA Binational Secretariat.

Panel Decision

The panel affirmed in part and remanded in part the ITA final determination. The panel affirmed the finding of the ITA that fresh market raspberries sold complainant Marco in the home market were not the same as, or similar to, the bulk-packed red raspberries which were the subject of the antidumping order under review and further affirmed the ITA's use of constructed value as the basis for determining Marco's foreign market value.

The Panel held defective and remanded the ITA's finding that home market sales of Clearbrook and Mukhtiar were not adequate for use as the basis for determining foreign market value. The panel directed ITA to provide within 30 days after the date of the panel decision (by not later than January 16, 1989) its explanations of the reasons why Clearbrook's and Mukhtiar's home market sales do not form an adequate basis for calculating foreign market value.

The panel further ordered that the complainants file with the panel any comments they may have on the results of the remand within 15 days after the filing of the ITA's explanation, and that the ITA respond within 15 days after the filing of complainants' comments.

Dated: December 18, 1989.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 89-29757 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Thursday, January 11, 1990, from 10:00 a.m. to 11:00 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to discuss the Institute's budget and to present the Visiting Committee's 1989 Annual Report to the Department of Commerce, so that the Secretary can forward this report to the Congress by the Congressionally mandated deadline of January 31, 1990. The members of the Committee will discuss their findings as outlined in the report. The discussion on NIST budget scheduled to begin at 10:30 a.m., and to end at 11 a.m., on January 11, 1989, will be closed.

DATE: The meeting will convene January 11, 1990, at 10 a.m. and adjourn at 11:00 a.m. on January 11, 1990.

ADDRESS: The meeting will be held in Conference Room 5859, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1989, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: December 18, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-29752 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

After the November 1989 meeting of the Pacific Fishery Management Council, amendment and drafting oversight committees were appointed to proceed with developing a limited entry amendment to the Groundfish Fishery Management Plan. The Committees' first public meeting will be held January 11-12, 1990, at the Metro Center, 2000 SW. First Avenue, Room 440, Portland, OR. On January 11 the Committees will begin meeting at 11 a.m., and will draft a statement of problem and need, develop a lsit of alternatives to limited entry, review written public comments, and consider the need for various modifications to current proposals.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 15, 1989.

David S. Crestin,

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

[FR Doc. 89-29728 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 91045-9245]

Draft Policy Statement on the Weather Service/Private Sector Roles

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice requests public comment on a draft policy statement on the weather service/private sector roles entitled "The National Weather Service (NWS) and Private Weather Industry: A Public-Private Partnership." This statement was jointly prepared by the Office of Privatization of the Office of Management and Budget and the National Oceanic and Atmospheric Administration National Weather Service. This draft policy statement includes general criteria for the respective roles of the NWS and the private sector; specific NWS and private weather industry activities; and an implementation plan ensuring an effective public-private partnership.

DATE: Comments must be received on or before January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 13th Street, Silver Spring, Maryland 20910, (301) 427-7258.

Dated: December 18, 1989.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Draft Policy Statement on the Weather Service/Private Sector Roles

The National Weather Service and the Private Weather Industry: A Public-Private Partnership

Accurate and timely weather forecast and warning systems are vital to the well-being of the nation's population. Weather forecasting harnesses modern advances in information to increase the productivity of American industry—thereby contributing to economic growth. But to provide American industry with the proper tools to increase productivity, a public-private partnership is needed.

The National Weather Service (NWS) is the single official voice for issuing warnings of severe weather and floods to the general public. In recent years, there has been an increasing appreciation that weather information is more than protection of public safety and is of great importance in the management of business and industrial operations as well. Today's technological and scientific advances have created the opportunity for NWS to increase the accuracy of both warnings of severe weather and general public forecasts. However, in order to satisfy this public safety role, NWS cannot meet and respond to the growing market demands for environmental data, products and services by individual users. A public-private partnership is needed if the requirements of the total user community are to be met. The private meteorologists must be encouraged to play an essential role to meet the needs of the nationwide user community if the requirements of the total user community across the nation are to be met.

Over the past few years, there has been a substantial growth in private meteorological services in the United States. The role of the private sector has increased in data acquisition, dissemination, weather forecasting, computer modeling, and other weather related services. There are over 100 private companies in the United States that prepare and disseminate weather forecasts, data, and products to business and specialized users. Private firms now provide a variety of commercial services, for consumption by business and industry, agriculture, aviation, government, the media and the public.

A cooperative relationship between NWS and the private sector will provide both industry and the general public with more accurate and timely weather forecasts and weather products. A partnership will allow each sector to perform those functions which it can carry out best. The purpose of this policy statement is to define that relationship and the respective roles of NWS and the private sector to ensure that Federal resources are focused on providing essential core functions and avoid unnecessary duplication of services and competition with the private sector. The goal is a partnership which enhances total service to the American public and industry.

General Criteria

The respective roles of NWS and the private sector described below are based on the following criteria:

- The primary mission of the National Weather Service is public safety. As such, the core function of NWS is the formulation and issuance of warnings of severe weather and floods to the general public and emergency managers at all levels of government. In this capacity it is the single "official" voice when issuing warnings for life threatening situations. These services forms an infrastructure on which the private sector can build and grow.
- The private weather industry is ideally suited to put the basic data collected by NWS into a form that can be utilized by weather sensitive or weather interested end users. Specically:

—Real-time meteorological services oriented to specific segments of the population with specialized needs, and

—Analytic, value-added, and advisory services by which clients can gain advantages from the vast store of available empirical and scientific evidence and knowledge to fulfill economic objectives.

- NWS will not compete with the private sector in these services when such a service is currently offered or can be offered by commercial enterprises, unless otherwise directed by applicable law.

The National Weather Service

In order for the National Weather Service to meet its public safety role, it will:

- Collect weather data and information on a national and international basis. This includes surface and upper air data, satellite information and imagery, radar reports, and any other data germane to the analysis and prediction of the earth's atmosphere;
- Arrange for the archiving of environmental information for use by interested parties for practical application or research;
- Organize and support research and development of global and national models of the atmosphere. These models currently are the fundamental basis for all weather forecasting, research and specialized studies;
- Maintain and operate computer facilities for producing global, national or general regional atmospheric models;
- Carry out legal mandates to formulate and issue weather forecasts for the general public, aviation, marine and agricultural interests and emergency managers at all levels of government as well as warnings of severe weather and flood events which adversely affect life and property.

The Private Weather Industry

Based on the general criteria, the private weather industry is encouraged to:

- Provide tailored weather forecasts, detailed weather information, consultation, data, and forecasts for all weather sensitive industries and private organizations;
- Provide value-added products such as weather-related computer hardware and software, observational systems imaging, displays, communications, charts, graphs, maps, images for clients; and
- Provide advisory statements to clients on warnings, including local weather events as snowstorms, etc. (in cases where the clients expect private meteorologists to have significant understanding of their operational needs).

In addition, the private sector should be encouraged to develop data that could be provided to the government on contract.

Implementation

In order to meet its public safety role, NWS cannot meet and respond to specific requests by individual users beyond inquiries concerning NWS products. This is the role of the private sector. Accordingly, requesters shall be advised that it is NWS policy not to provide specialized weather forecasts and products for business and industry, unless otherwise directed by applicable laws, and that such services are available from private sector sources. NWS officials and employees should take all necessary steps to avoid duplication of, or competition with private sector firms that provide or can provide such specialized weather services. The Director of the National

Weather Service will investigate external claims that this policy is not being followed by NWS employees. In the event that the Director is involved in the claim to be investigated or if the claimant wishes to appeal the Director's decision on an external claim, it will be investigated by an organizational entity independent from the Weather Service.

An effective partnership requires that the parties understand each other's roles and be sensitive to the constraints and aspirations that govern their respective actions. This policy statement cannot cover all possibilities. Close coordination and cooperation are essential to ensure that the public receives the best possible weather service. Regional and local NWS officials should arrange periodic meetings with private meteorologists to promote an exchange of ideas which will be mutually beneficial and increase understanding between the two groups. The overriding goal of this policy statement is to ensure that the Nation receives the full benefit of weather information to promote safety of life and property and economic prosperity. Effective partnership between NWS and the private meteorological sector is the means to that end.

Opportunity for Comment

The NWS is hereby inviting comments on the draft policy statement on the weather service/private sector roles prior to any final decision to implement. For comments to be considered, they must be forwarded in writing to the following address and be received no later than 30 days after the date of this announcement.

Address comments to: National Weather Service, Gramax Building, 8060 13th Street, Silver Spring, Maryland 20910, Attn: Edward M. Gross, Room 1412.

[FR Doc. 89-29755 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This actions adds to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 22, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 13 and November 3, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 42010 and 46445) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

No comments were received in response to the notice of proposed addition to the Procurement List. However, during the development stage a current contractor for tube type markers claimed that the loss of a category like the markers would be devastating to the industry since they represent between 15 and 25 percent of the industry's Government pen business.

The estimated annual sales for these markers represent less than 1 percent of the total annual sales of any firms which supply the government with these markers. As a result, the addition of these items will not have a severe adverse impact on any of the firms.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1990:

Commodities

Marker, Tube Type
7520-01-166-0682
7520-01-159-1585
7520-00-460-7598

Service

Commissary Shelf Stocking & Custodial
White Sands Missile Range, New Mexico.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-29795 Filed 12-21-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 22, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Bus Service, Veterans Administration Medical Center, Outpatient Clinic, Tomah, Wisconsin;
Grounds Maintenance, Portland Air National Guard Base, Portland, Oregon;
Janitorial/Custodial, Bureau of Public Debt, 200 Third Street, Parkersburg, West Virginia;
Mailing of Initial Technical Orders, Robins Air Force Base, Georgia.

Deletion

It is proposed to delete the following service from Procurement List 1990,

which was published November 3, 1989 (54 FR 46540):

Commissary Shelf Stocking, Naval Station, Roosevelt Roads, Puerto Rico.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-29796 Filed 12-21-89; 8:45 a.m.]

BILLING CODE 6820-33-M

Procurement List 1990; Establishment; Notice Correction

In FR Doc. 89-25872 appearing at page 46540 in the issue for Friday, November 3, 1989, make the following corrections:

1. On page 46540, second column, under Class 1080, Assembly of Kit Camouflage Support System (IB) should not be listed.

2. On page 46563, second column, the entry under Preservation and Packaging should be followed by an (IB) rather than (SH).

3. On page 46563, third column, the entry under Sponge Rubber Mattress Rehabilitation should be followed by an (IB) rather than (SH).

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-29797 Filed 12-21-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 7, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on 10 January 1990, from 7:45 a.m. to 5 p.m., at Northrop, Pico Rivera Facility, Los Angeles, CA; on 11 January 1990, from 7:45 a.m. to 12 p.m., Northrop, Palmdale Facility, Palmdale, CA; and on 12 January 1990, from 7 a.m. to 5 p.m. at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to orient Scientific Advisory Board members on the B-2 Strategic Bomber, and report status of Intelligence and Space Panel investigations. The meetings will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89-29790 Filed 12-21-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Coal-Fired Power Generating Plant To Be Constructed by Virginia Power Company in Either Cumberland; Greensville, or Mecklenburg County, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate environmental impacts, project alternatives, and other public interest review factors for the proposed coal-fired electrical generating plant.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Bob Hume, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510, Telephone: (804) 441-7657.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Virginia Power proposes to develop up to 2,400 megawatts of electrical generating capacity through the construction of a coal-fired power plant at one of three sites in Virginia. Each site would require an intake and outfall structure, and at least one site (Cumberland) would also require a make-up water reservoir. These activities require a Corps of Engineers permit pursuant to section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and/or section 404 of the Clean Water Act Pub. L. 95-217). Any of these three alternatives would involve a consumptive use of up to 60 cubic feet per second (39 million gallons per day) of cooling water which would come from the James River (for Cumberland County), Roanoke Rapids Reservoir (for Greensville County), or John H. Kerr Reservoir (for Mecklenburg County). Site investigations to determine whether wetlands would be impacted have not been completed.

2. Alternatives

Alternatives which will be investigated include, but will not be limited to, site alternatives, generating alternatives, conservation, and no project.

3. Scoping Process

A Notice of Intent to Prepare an EIS was originally announced in the Federal Register in 1979, and three public scoping meetings were held in each of the affected counties on October 23-25 of that hear. (At that time, a site was being considered in Buckingham County, but was later changed to the adjacent county of Cumberland). Two scoping meetings for State and Federal agencies have been held; one on March 8, 1984 and the other on October 12, 1989. Some of the significant issues identified so far include instream flows, effects on local employment and economy, air quality impacts, and ash/scrubber waste disposal.

4. Public Scoping Meeting

Because of the public scoping meetings held in 1979, no others are proposed. (For purposes of developing an outline for the scope of the Draft EIS, the public input from the 1979 Buckingham County meeting will probably be adequate for adjacent Cumberland County). However, due to the time which has elapsed, copies of this Notice and pertinent maps are being sent to the three county governing bodies and to newspapers having circulation in these areas. Written comments on the scope of the Draft EIS will be accepted from any interested agency, organization, or individual through January 2, 1990.

5. DEIS Availability

It is estimated that the DEIS will be available to the public for review and comment in the summer of 1990.

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 89-29851 Filed 12-21-89; 8:45 am]

BILLING CODE 3710-EN-M

Intent To Prepare Joint Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR); Sunrise-Douglas Property, Sacramento, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft EIS.

Intent to prepare a joint Draft Environmental Impact Statement (EIS)/

Environmental Impact Report (EIR) for the proposed development of a 1,225-acre site ("Sunrise-Douglas Property") located adjacent to, and east of Mather Air Force Base. The property is bounded by Sunrise Boulevard on the west, Douglas Road on the north, Jaeger Road on the east, and Kiefer Boulevard on the south in Sacramento County, California.

SUMMARY: The Sammis Company has applied for a Department of the Army permit pursuant to section 404 of the Clean Water Act to place fill into 47.2 acres of wetlands and other waters subject to DOD jurisdiction. The proposed project site consists primarily of rolling grassland previously used as pasture. Total DOD jurisdiction is 84.9 acres and consists of vernal pools (59.5 acres), seasonal drainages (20.4 acres), and two excavated ponds (5.0 acres). The applicant is proposing construction of residential housing (737.8 acres), industrial office park (64.9 acres), commercial space (38.0 acres), a school (10.2 acres), parks (27.6 acres), landscaping (23.3 acres), and two water detention basins (21.2 acres). The remaining acreage would be used for open space, landscaping, and roads rights-of-way. The open space area would include a 303.5-acre vernal pool preserve (33.2 acres of existing vernal pools and 4.5 acres of existing seasonal drainage). In addition, two detention basins (21.2 acres) would be constructed and designed to function as compensatory seasonal wetland. The applicant proposes to mitigate for lost vernal pool habitat with acre-for-acre (1:1) compensation within the preserve.

Alternatives

The alternatives being considered at this time are:

a. The primarily residential development as proposed by the applicant;

b. Alternate site location;

c. Reduced project onsite (mitigated design); and

d. No action (No-Project Alternative)

Significant Issues

The significant issues which have been identified to date and which will be analyzed in the report are:

a. The need for housing, industrial, and/or commercial space;

b. Impacts to wetlands and ability to create vernal pool habitat;

c. Impacts to rate plant communities;

d. Impacts to wildlife;

e. Surface water and ground hydrology;

f. Impacts on water quality;

g. Impacts on traffic; and

h. Impacts on air quality

Other Environmental Review and Consultation

Environmental review and consultation as required by sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11990 "Protection of Wetlands," 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIR/EIS review process.

The Sacramento District of the U.S. Army Corps of Engineers will issue a 30-day public notice, concurrently with this notice, to initiate the scoping process. The public notice will be sent to all known, interested parties, and will request that the reviewers provide comments on the topical scope, alternatives, and major issues to be covered in the Draft EIR/EIS. We intent to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for a public scoping meeting will be considered.

Schedule

It is estimated that the Draft EIR/EIS will be made available to the public in spring 1990.

FOR FURTHER INFORMATION: Questions concerning the proposed action and Draft EIR/EIS should be directed to Mr. Larry Vinzant, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, Telephone: (916) 551-2261.

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 89-29850 Filed 12-21-89; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF ENERGY

Floodplain and Wetland Involvement Notification for Action Along a Proposed Haul Road to the Cheney Uranium Mill Tailings Disposal Site, Mesa County, CO

AGENCY: U.S. Department of Energy.

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: The Department of Energy proposes to construct a haul road in Mesa County, Colorado, to haul uranium mill tailings. The proposed haul road will be constructed in the right-of-away parallel to U.S. Highway 50 from Whitewater, Colorado, to the Cheney uranium mill tailings disposal site. This action will impact nine acres of salt grass dominated wetlands include a variety of wetland plant species. Floodplains involved include the 100- and 500-year floodplains of Kannah and Indian Creeks. Construction activities would involve the removal of vegetation and the construction of a road in the wetlands and floodplains.

In accordance with Department of Energy regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), the Department of Energy will prepare a floodplain/wetlands assessment for this activity. Maps and further information are available from the Department of Energy at the address shown below.

DATE: Comments must be received on or before January 15, 1990.

ADDRESS: Send comments to: Mark Matthews, Acting Project Manager, Uranium Mill Tailings Remedial Action Project Office, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico 87108.

Issued in Washington, DC on December 6, 1989.

Roger P. Whitfield,

Associate Director, Office of Environmental Restoration.

[FR Doc. 89-29785 Filed 12-21-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP88-474-000, et al.]

Texas Eastern Transmission Corp. et al.; Intent To Prepare a Comprehensive Draft Environmental Impact Statement for the Proposed Mobile Bay Pipeline Projects, Request for Comments on Its Scope, and Public Scoping Meetings

December 19, 1989.

The Commission staff is preparing a comprehensive environmental impact statement (EIS) to address the potential environmental impacts for five offshore pipeline projects and three onshore pipeline projects proposed by a total of eight companies. These projects are proposed to transport natural gas produced from offshore fields in the Mobile Bay area to interconnections with existing natural gas transmission systems.

Introduction

On August 1, 1988, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of

Deadline for 1989–1990 Certification of Mobile Bay Construction Applications in Docket No. CP88–570–000. The Commission indicated in its notice that it had received several applications proposing construction and operation of pipeline facilities to move natural gas from the Mobile Bay area. In order to efficiently process the applications already on file, as well as those to be filed, the Commission established a deadline of December 30, 1988 for the submission of applications or amendments for projects requiring certification no later than the end of 1990. Applications filed or amended after December 30, 1988, were to be considered applications for post-1990 certification. In response to this notice, the FERC received a number of applications for a Certificate of Public Convenience and Necessity for construction of natural gas pipelines and associated facilities. These projects are described below.

The potential environmental impacts for Southern Natural Gas Company's proposal in Docket No. CP89–517–000 and Gateway Pipeline Company's (Gateway) optional certificate proposal in Docket No. CP89–471–000 will be addressed in separate environmental documents. Since Gateway's conventional section 7(c) application filed in Docket No. CP88–393–000 is for the same facilities as its optional certificate proposal, the environmental analysis will not be duplicated in this EIS. If necessary, that analysis will be incorporated into this EIS by reference.

In addition, Florida Gas Transmission Company, Southern Natural Gas Company, and Tennessee Gas Pipeline Company filed joint application in Docket No. CP89–464–000 which indicated a preference for that application over the applications filed separately in Docket Nos. CP87–415–002, CP88–437–000, and CP89–513–000. The non-preferred applications will, therefore, not be addressed at this time. However, discussions of alternatives and conclusions in the comprehensive EIS may include the routes identified in these applications.

A comprehensive EIS was selected as the best means of evaluating the environmental impact of the remainder of the applications because of the commonality of many resource issues and the similarity of routes, and hence, affected jurisdictions, and the potential for cumulative impact from these projects. The inclusion of these projects into a single EIS does not in any way represent a decision or opinion by either the Commission or its staff that these projects are competitive.

Project Descriptions

Each of the projects to be included in the EIS is described briefly as follows:[1]

Texas Eastern Transmission Corporation (Texas Eastern)

[Docket No. CP88–474–000]

Offshore Only

Texas Eastern proposes to construct a 13.0-mile, 24 inch-diameter pipeline from the end of its existing 24-inch-diameter pipeline in Main Pass Block 165 to a termination point at Viosca Knoll Block 203. A 0.3-mile, 16-inch-diameter pipeline extension from the termination point of the proposed 13.0-mile, 24 inch-diameter pipeline to the Block 203 production platform is also proposed. This pipeline extension would transport 70 MMcfd of natural gas to Texas Eastern's Main Pass/Chandeleur offshore pipeline system and then to onshore facilities in Louisiana.

Jubilee Pipeline Company (Jubilee)

[Docket No. CP88–646–000]

Offshore and Onshore

Jubilee proposes to construct an offshore pipeline system to transport 315 MMcfd of gas from various production platforms in the offshore blocks of Mobile Bay and Viosca Knoll, through Alabama Tract 94 to onshore interconnections with the existing Transcontinental Gas Pipe Line Corporation pipeline in Mobile County, Alabama. Proposed facilities consist of: 35.4 miles of 24-inch-diameter pipeline; 10.1 miles of 20-inch-diameter pipeline; 25.9 miles of 16-inch-diameter pipeline; 7.8 miles of 12-inch-diameter pipeline; 2.4 miles of 8-inch-diameter pipeline; a 6,000 horsepower onshore compressor station with separation/dehydration facilities; and metering facilities.

Florida Gas Transmission Company (FGT), Southern Natural Gas Company (Southern) and Tennessee Gas Pipeline Company (Tennessee) [Docket No. CP89–464–000]

Onshore Only

FGT, Southern, and Tennessee have jointly filed an application in which Southern and Tennessee propose to construct a total of approximately 51.9 miles of 36-inch-diameter pipeline and related facilities extending from the tailgates of the proposed Jubilee Compressor Station and dehydration plant and Mobil Oil Exploration and Producing Southeast, Inc.'s (MOEPSI) gas treatment plant and a 0.6-mile, 36-inch-diameter pipeline from the planned Exxon Corporation (Exxon) gas treatment facility, to points on FGT's 24- and 30-inch-diameter mainlines, all in Mobile County, Alabama. In addition, the proposed system would also connect to Shell Offshore, Inc.'s (Shell) planned gas treatment plant; however, no additional pipeline facilities are anticipated or proposed herein to connect to the Shell facility. Metering facilities are to be located at the proposed interconnection with FGT's system and at the tailgates of each of the existing or planned treatment plants; however, Jubilee has proposed to construct the metering facility at its dehydration plant.

The proposed facilities would receive 900 MMcfd of sales gas from the treatment facilities, then redeliver 300 MMcfd through FGT's system to a proposed interconnection with the Tennessee mainline at Carnes, Mississippi. This interconnection would not require any modifications to existing Tennessee systems other than a metering station and associated piping. In addition, Southern proposes to construct 2.6 miles of 24-inch-diameter pipeline, taps, and metering facilities from the proposed interconnection facility at FGT's pipeline to its existing Franklinton Compressor Station in Washington Parish, Louisiana. The proposed pipeline would be used to transport up to 300 MMcfd of gas. No added compression is planned; however, modifications to FGT's Compressor Station 10 in Perry County, Mississippi and Southern's Franklinton Compressor Station would be required.

Texas Eastern Transmission Corporation (Texas Eastern) and ANR Pipeline Company (ANR)

[Docket No. CP89–511–000]

Onshore Only

Texas Eastern and ANR have jointly filed an application to construct, in two phases, approximately 203.7 miles of 30-inch-diameter pipeline extending from the existing and future Mobile Bay gas treatment facilities in Mobile County, Alabama, to Texas Eastern's Kosciusco Compressor Station in Attala County, Mississippi. Up to 11,000 horsepower of compression, as well as metering facilities, would be located at the beginning of the pipeline near Exxon's

[1] An appendix to this notice includes a figure showing the general location of the proposed facilities, a table listing the proposed facilities, and proposed construction procedures. This appendix is not being printed in the **Federal Register**, but has been mailed to all parties and all agencies and persons on the mailing list for this notice. Copies are also available from the Commission's Public Reference Branch at 825 North Capitol Street, N.E., Room 2200, Washington, DC 20426, telephone (202) 357–8118.

planned gas treatment plant, and a second 11,000-horsepower compressor station would be located near the midpoint of the 30-inch-diameter pipeline in Wayne County, Mississippi. Metering facilities at Kosciusco Station and at a proposed interconnection facility between the ANR and Texas Eastern mainlines in West Carroll Parish, Louisiana, would also be constructed. The proposed pipeline would receive up to 600 MMcfd from the Mobile Bay gas treatment facilites, then deliver 400 MMcfd to Texas Eastern at its Kosciusco Station and 200 MMcfd to ANR through Texas Eastern's system either at its Rayne lateral in St. Landry Parish, Louisiana, or at the proposed West Carroll interconnection.

Texas Eastern Transmission Corporation (Texas Eastern)

[Docket No. CP89–512–000]

Offshore and onshore

Texas Eastern proposes to construct a pipeline system extending from the existing and future Mobile Bay gas treatment facilities in Mobile County, Alabama, to the applicant's proposed 24-inch-diameter pipeline (see discussion of Docket No. CP88–474–000 above.) The pipeline would be constructed in three main segments: a 55-mile, 24-inch-diameter pipeline extending from the future Exxon gas treatment plant in Mobile County, Alabama, offshore to a production platform in Viosca Knoll Block 203; a 9-mile, 12-inch-diameter pipeline lateral from the proposed 24-mile, 12-inch pipeline lateral from the proposed 24-inch-diameter pipeline in Mobile Block 867 to Mobile Block 821; and an 11.2-mile, 24-inch-diameter loop of the existing 16-inch-diameter 40–B–3 pipeline in Texas Eastern's Main Pass/Chandeleur offshore pipeline system. At the tailgate connection to the future Exxon treatment plant, a compression facility of up to 4,000 horsepower and a metering facility would be constructed to deliver up to 287 MMcfd of gas.

Chandeleur Pipe Line Company (Chandeleur)

[Docket No. CP89–518–000]

Offshore and Onshore

Chandeleur proposes to construct a total of 37.0 miles of 20-inch-diameter offshore pipeline in the following two segments: a 7.4-mile, 20-inch-diameter pipeline extension from the end of Chandeleur's existing 12-inch-diameter pipeline at Mobile Block 861 to the platform in Mobile Block 907; and a 29.6-mile, 20-inch-diameter pipeline extension from the Block 907 termination to the platform in Mobile Block 961. The proposed pipeline would allow Chandeleur to transport 75 MMcfd of gas to an existing mainline interconnect, and from there to onshore facilities. A proposed dehydration plant would be constructed onshore, near the Chevron refinery in Pascagoula, Mississippi.

Transcontinental Gas Pipe Line Corporation (Transco)

[Docket No. CP89–522–000]

Offshore and Onshore

Transco proposes to construct, in three phases, 75.8 miles of 20- and 24-inch-diameter pipeline in the following three segments: an 18-mile, 24-inch-diameter pipeline extending from an onshore connection with Transco's existing 30-inch-diameter pipeline in Mobile County, Alabama, to an offshore junction platform in Mobile Block 109; a 27.1-mile, 20-inch-diameter pipeline extending from the Block 109 junction platform to a junction platform in Viosca Knoll Block 206; and a 30.7-mile, 20-inch-diameter pipeline from the Block 206 junction platform to a junction platform in Main Pass East Addition Block 249. Each of the three proposed junction platforms would contain sweet gas separation and dehydration facilities and would provide connection points for producer-owned gathering lines from their various production platforms. Phases II and III of this project would result in the installation of compression facilities totaling 12,200 horsepower at the southern end of the 24-inch-diameter onshore pipeline for the delivery of 515 MMcfd of sales gas to Transco's existing 30-inch-diameter pipeline.

Transcontinental Gas Pipe Line Corporation (Transco)

[Docket No. CP89–523–000]

Onshore Only

Transco proposes to construct 2.58 miles of 24-inch-diameter pipeline in Mobile County, Alabama from the tailgate of the planned Exxon gas treatment plant to the tailgate of the MOEPSI plant where it would connect with Transco's existing 124-mile, 30-inch-diameter pipeline, which is currently being operated under section 311 of the Natural Gas Policy Act. Transco requests authority to operate this pipeline under Section 7(c) of the Natural Gas Act. An additional 8,500 horsepower of compression would be added to the onshore compressor station proposed in Docket No. CP89–522–000. The existing pipeline would receive 300 MMcfd through metering facilities near the tailgate of the MOEPSI gas treatment plant and would transport the sales gas to Transco's mainline near Butler, Alabama.

Notice of Intent

Notice is hereby given that the FERC staff has determined that approval of the proposed Mobile Bay pipeline projects included in this notice would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 380.6 (a)(3) of the Commission's Rules of Practice and Procedure, 18 CFR 380.6 (a)(3), an EIS will be prepared. All the projects are being included for the reasons stated in the introduction of this notice.

The FERC will be the lead Federal Agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act.

Outline of Current Environmental Issues

The EIS will address the environmental concerns that have been and will be identified by the FERC staff, intervenors, other Federal and state agencies, and individuals who respond to notices on this project. These issues include, but are not limited to:

Topography and soils
- Erosion control.
- Impact on crop production and farmland.

Geology and Hydrology
- Impact on existing water flow patterns in streams and wetlands.
- Impact on water table.
- Effects of construction on potable water supplies and surface water quality.

Wetlands and Vegetation
- Effects of construction on wetlands.
- Revegetation and right-of-way management.
- Loss of plant species of special concern.

Fish and Wildlife
- Impact on fisheries.
- Impact on threatened and endangered species.
- Impact on bird rookeries and other specialized habitat.

Land Use, Socioeconomics and Aesthetics
- Impact on homes and population centers.
- Impact on recreation, public lands, and natural areas.
- Appearance of right-of-way.
- Impact on scenic areas.
- Impact on designated Federal, state, and local land use areas (parks, recreation areas, etc.)
- Conflicts with existing or potential land uses.

Cultural Resources

- Effect on properties listed on or eligible for inclusion on the National Register of Historic Places.

Air Quality
- Effect of compressor station operation on air quality.

Noise
- Effect of compressor station operation on nearby noise-sensitive receptors.

Alternatives
- Sites.
- System designs.
- Route modifications.
- Project consolidation.
- Mitigating measures.

After comments from this notice are received and analyzed, and the various issues have been investigated, the FERC staff will publish a draft EIS (DEIS) entitled "The Mobile Bay Pipeline Projects."

Description of an Alternative Route

The FERC staff has currently identified an alternative route for the proposed Texas Eastern/ANR project (Docket No. CP89–511–000) and certain components of the other onshore routes for the proposed Mobile Bay Pipeline Projects. This alternate route would follow the existing Transco pipeline right-of-way for approximately 124 miles from the vicinity of the MOEPSI gas treatment plant northward to the vicinity of Butler, Alabama in Choctaw County. This alternate route would then follow a new right-of-way for approximately 102 miles to the northwest to Texas Eastern's existing Kosciusco Compressor Station in Attala County, Mississippi.

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the DEIS:

Advisory Council on Historic Preservation, Department of Defense: U.S. Army Corps of Engineers, Department of the Interior: Minerals Management Service, Department of Transportation: U.S. Coast Guard

These or any other Federal or state agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The request should reference Docket Nos. CP88–474–000, CP88–646–000, CP89–464–000, CP89–511–000, CP89–512–000, CP89–518–000, CP89–522–000 and CP89–523–000 and should be received by February 6, 1990. Additional information, including detailed maps of limited areas of the proposed routes, may be obtained from the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency.

Comment and Scoping Procedures

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. The distributed copy includes an appendix containing a figure showing the general location of the proposed facilities, a table which summarizes project information, and a description of the proposed construction procedures. In addition, detailed maps of the proposed routes will be provided to administrative officials of each affected county.

Public scoping meetings will be held in January at the following locations:

Date	Time	Location
January 17, 1990.	7:00 p.m.	Holiday Inn North, 850 S. Beltline Hwy., Mobile, Alabama.
January 18, 1990.	7:00 p.m.	Holiday Inn South, Highway 45, Meridian, Mississippi.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental concerns which they believe should be addressed in the DEIS. Persons who would like to make oral presentations at the meeting should contact the FERC project manager identified at the end of this notice to have their names placed on the speakers list. Priority will be given to those persons representing groups. A second speakers list will be available at the public meeting. A transcript of the meeting will be made and comments will be used to help determine the scope of the DEIS.

Written comments are also welcome. Comments should help identify significant issues or concerns related to the proposed action including potential alternatives. All comments on specific environmental issues should contain supporting documentation and a clearly stated rationale.

Written comments must be filed on or before February 6, 1990, and should reference Docket Nos. CP88–474–000, CP88–646–000, CP89–464–000, CP89–511–000, CP89–512–000, CP89–518–000, CP89–522–000 and CP89–523–000. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

A copy of the comments should also be sent to the FERC project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. Any person may file a motion to intervene on the basis of the staff's DEIS [18 CFR 380.10(a) and 385.214]. A 45-day comment period will be allotted for review and comment on the DEIS. After these comments are reviewed, any significant new issues identified will be investigated, and modifications will be made to the DEIS as appropriate. A final EIS (FEIS) will then be published and distributed by the staff. The FEIS will contain the FERC staff's responses to comments received on the DEIS.

Additional information about the proposal is available from Mr. Philip Veres, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, telephone (202) 357–8073 or FTS 357–8073.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29832 Filed 12–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–759–002]

Transcontinental Gas Pipe Line Corp; Sale of Natural Gas

December 14, 1989.

Take notice that on November 30, 1989, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas, 77251, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transco's Rate Schedule IS, pursuant to the authorization granted by order in Docket Nos. CP89–759–000, *et al.*, issued March 24, 1989 [46 FERC ¶ 61,351].

(1) Name of Buyer: Texas Gas Transmission Corporation (Texas Gas).

(2) Location of Buyer: Owensboro, Kentucky.

(3) Affiliation between Transco and Buyer: both Transco and Texas Gas are subsidiaries of Transco Energy Company.

(4) Nature of the Transaction: purchase for system supply.

(5) Term of Sale: December 30, 1989, to March 15, 1990.

(6) Estimated Maximum Daily Quantity: 200,000 MMBtu Estimated Total Quantity: 3 Bcf.

(7) Rates: Maximum: 100% load factor rate plus adjustments; currently $2.04/MMBtu.

Minimum: current average spot price index for Gulf Coast region gas (currently $1.72/MMBtu) plus any upstream pipeline commodity charges incurred to provide the service.

Rate to be Charged During the Billing Period: Maximum rate, provided, however, that it not be more than Texas Eastern Transmission Corporation's Zone A commodity charge nor less than the minimum rate.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 24, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transco may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29729 Filed 12-21-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, January 12, 1990, 8:30 a.m.-3:00 p.m.

Place: Room 1E-245, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20545; Telephone: (301 353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Friday, January 12, 1990

- Presentation and discussion of the report of the HEPAP Subpanel on SSC Physics Research
- Reports on and discussions of topics of general interest in high energy physics
- Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 19, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-29787 Filed 12-21-89; 8:45 a.m.]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-79-NG]

Chevron Natural Gas Services, Inc.; Application To Extend Blanket Authorization Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 13, 1989, of an application filed by Chevron Natural Gas Services, Inc. (CNGS), requesting that the blanket authority previously granted in DOE/ERA Opinion and Order No. 186 (Order 186), issued August 4, 1987 (ERA Docket No. 87-23-NG), be extended for two years beginning on January 11, 1990, the expiration of its current import authorization, through the period ending January 11, 1992. Under the extension requested, CNGS would be authorized to import up to a maximum of 73 Bcf of Canadian natural gas over a two-year period.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 22, 1990.

ADDRESS: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, FE-53, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586-9478.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, GC-32, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586-6667.

SUPPLEMENTARY INFORMATION: CNGS, a Delaware corporation with its principal place of business in Houston, Texas, is a marketer of natural gas in the United States. CNGS requests authority to continue to import competitively priced natural gas from reliable Canadian producers for sale to purchasers in the United States on a short-term or spot basis. CNGS proposes to import natural gas either for its own account or acting as agent for United States purchasers and/or Canadian suppliers. CNGS intends to use existing facilities for the transportation of the gas. CNGS also would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions. CNGS' prior quarterly reports filed with FE indicate that approximately 640 MMcf of natural gas was imported under Order 186 through September 30, 1989.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue

of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CNGS' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–29786 Filed 12–21–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3699–7

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed December 11, 1989 Through December 15, 1989 Pursuant to 40 CFR 1506.9

EIS No. 890349, Draft, FHW, PR, PR–3 Relocation, PR30 (Humacao South bypass Extension) to PR–15 at Guayama, Funding, PR, Due: February 5, 1990, Contact: Mr. Juan O. Cruz (809) 766–5600.

EIS No. 890350, Draft, COE, WY, Jackson Hole Flood Protection/Levee Maintenance Plan, Operation and Maintenance (O&M), Snake and Gros Ventre Rivers, Funding, Teton County, WY, Due: February 6, 1990, Contact: Wiliam F. MacDonald (509) 522–6625.

EIS No. 890351, Final, BLM, WY, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY, Due: January 29, 1990, Contact: Glen Nebeker (307) 261–7600.

EIS No. 890352, Final, AFS, CA, Doe Ridge Golf Course Development and Operation, Special Use Permit, Inyo National Forest, Mono County, CA, Due: January 22, 1990, Contact: Dean McAlister (619) 934-2505.

EIS No. 890353, Final, SCS, NV, East Walker Watershed Project, Water Management Improvement and Sediment Deposition Reduction, Funding and Implementation, Lyon County, NV, Due: January 22, 1990, Contact: William Goddard (702) 784–5863.

EIS No. 890354, DSuppl, NPS, CA, Lassen Volcanic National Park General Management Plan, Traditional Visitor Use, Manzanita Lake Area, Implementation, Butte, Plumas, Lassen Tehama and Shasta Counties, CA, Due: February 23, 1989, Contact: Gilbert E. Blinn, (916) 595–4444.

Amended Notices

EIS No. 890218, Draft, NPS, FL, Big Cypress National Preserve, General Management Plan, Implementation, Collier, Dade, and Monroe Counties, FL, Due: March 1, 1990, Contact: Fred Fagergren (813) 695–2000. Published FR 08–11–89—Review period extended.

EIS No. 890266, DSuppl, USA, WA, Yakima Firing Center Expansion of Military Training Center, Land Acquisition, Possible Changes in the Force Structure of the 9th Infantry Division, Fort Lewis Military Installation, Yakima and Kittitas Counties, WA, Due: December 27, 1989, Contact: Gary Stedman (206) 967–5337. Published FR—9–29–89—Review period extended.

EIS No. 890330, Draft, UAF, CA, Norton Air Force Base (AFB) Closure, 63rd Military Airlift Wing, Relocation to March AFB, Implementation, San Bernardino County, CA, Due: January 8, 1990, Contact: Patricia Calliott (618]

256–5764. Published FR 11–24–89—Incorrect phone number.

Dated: December 19, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–29801 Filed 12–21–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3699–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 4, 1989 through December 8, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D–AFS–K67009–NV, Rating EO2, South Twin Lodge Mining and Development Proposal, Approval of Plan of Operations, Arc Dome Recommended Wilderness Area, Toiyabe Mountains, Toiyabe National Forest, Nye County, NV.

Summary

EPA expressed environmental objections due to potential project impacts to groundwater and surface water quality and to riparian, wetland, and aquatic habitats. EPA suggested that this document be revised to include additional information, data and analysis of potential water quality and wetland impacts.

ERP No. D–FHW–K40174–CA, Rating LO, West Los Angeles Veloway Project, connecting UCLA Campus with a portion of West Los Angeles, Construction, Los Angeles County, CA.

Summary

EPA has reviewed this document and has no objections to the project as described.

ERP No. D–SFW–B82009–00, Rating EO2, Lake Champlain Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT.

Summary

EPA suggests that non-chemical methods to control the lamprey population be more fully assessed in the alternatives analyses. EPA also recommends that the U.S. Fish and Wildlife Service review fish stocking programs in Lake Champlain. Finally, potential cumulative and secondary impacts to Lake Champlain are not sufficiently analyzed.

Dated: December 19, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–29802 Filed 12–21–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3697–5]

Designation of the Atchafalaya Ocean Dredged Material Disposal Site (ODMDS) Off Coastal Louisiana; Intent To Prepare a Supplemental Environmental Impact Statement (EIS)

AGENCY: U.S. Environmental Protection Agency (EPA), Region 6.

ACTION: Notice of intent to prepare a supplemental draft EIS on the designation of the Atchafalaya ODMDS off coastal Louisiana.

PURPOSE: In accordance with section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 and 40 CFR 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), EPA will prepare a Supplemental Draft EIS on the designation of the Atchafalaya ODMDS located off coastal Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Norm Thomas (6E–F), Chief, Federal Activities Branch, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (Commerical) (214) 655–2260 or (FTS) 255–2260.

SUMMARY: The Corps of Engineers (COE), New Orleans District, has responsibility for maintaning the Atchafalaya River Channel to its authorized depth. The COE has requested EPA to designate an ocean disposal site suitable for the disposal of material dredged from the channel. The proposed Supplemental Draft EIS will provide information regarding the environmental impacts from continued use of the Atchafalaya ODMDS. EPA prepared a Draft EIS for the Atchafalaya ODMDS Designation in November 1983. However, in order to correct several deficiencies and utilize more recent information, we have determined that preparation of a Supplemental Draft EIS is necessary.

Alternatives: Alternatives to be considered in the Supplemental Draft EIS include no action, upland disposal, beneficial use options and ocean disposal.

Scoping: A scoping meeting will not be held. Scoping with affected Federal, State and local agencies and with interested parties is being accomplished by correspondence.

Estimated date of release: The Draft EIS should be available in March 1990.

Responsible official: Mr. Robert E. Layton Jr., P.E., Regional Administrator of Region 6.

Dated: December 13, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–29800 Filed 12–21–89; 8:45 a.m.]

BILLING CODE 6560–50–M

[FRL–3699–6]

Open Meeting for Policy Review Board, Gulf of Mexico Program

DATE: January 12, 1990.

PLACE: University of Houston (Clearlake Campus), Houston, Texas

Agenda Items

- Appointments and reappointments of Federal and State Technical Steering Committee subcommittee co-chairs.
- Briefings with key congressional staff involved in coastal legislative proposals.
- Reports from the Technical Steering Committee including a list of proposed demonstration projects for the program.
- Gulf of Mexico Program annual report.
- A report from the Citizens Advisory Committee which includes a resolution that no relaxation of present restrictions and regulations take place as they relate to the offshore and inshore minerals industry and their discharge of brines, mud, and cuttings in the Gulf.

CONTACT: William R. Whitson, Assistant Director for Operations, Gulf of Mexico Program, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529, (601) 688–3726.

Al J. Smith, Jr.,

Deputy Director, Water Management Division.

[FR Doc. 89–29769 Filed 12–21–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 89-363; DA 89-1559]

Chicago Metropolitan Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Chicago Metropolitan Area's (Region 54's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin in that Region. The Chicago Metropolitan Area is the fourth of the 55 regions in the National Plan to be accepted.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted December 5, 1989, released December 13, 1989, accepting the Chicago Metropolitan Area's Plan for Public Safety. The full text of this Commission action 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 the Order may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

The Acting Chief, Private Radio Bureau and the Chief Engineer have accepted the regional public safety plan for the Chicago Metropolitan Area, Region 54. The Region 54 plan is the fourth public safety plan the Commission has accepted and it represents the culmination of the efforts of the many public safety organizations that participated in its development.

The Bureaus recognized the effort that went into preparing the Region 54 Plan and commended the Planning Committee for its work. They stated that Region 54 presented a challenge in terms of its population along the southern tip of Lake Michigan and its multi-state composition. They noted that Region 54, which includes 43 counties in four different States, designated primary and secondary zones within its borders to account for the disparity between urban and rural areas, and placed much stricter requirements on the primary zones. The Region 54 Plan represents a careful balance of the public safety and special emergency mobile communications needs throughout the area and will result in efficient use of the 800 MHz Public Safety radio spectrum.

In 1987, the Commission established policies and rules for a National Plan for public safety services to ensure that the new six megahertz of public safety spectrum (821–824/866–869 MHz) be used effectively and efficiently for important public safety functions. The Commission established 55 regions and instructed each region to develop a plan for use of the newly allocated spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the area. After each plan is completed and approved by its regional planning committee, it must be submitted to the Chief, Private Radio Bureau, and the Chief Engineer. After the two Bureau Chiefs have formally accepted a plan, the individual public safety entities can begin applying for licensing in the new 800 MHz spectrum.

The Bureaus noted that the plan had been coordinated with its four adjacent regions, Wisconsin (45), Illinois (13), Indiana (14) and Michigan (21).

The individual public safety entities in Region 54 may now begin applying for licensing in the 821–824/866–869 MHz bands.

Ordering Clauses

It is ordered that the Chicago Metropolitan Area Plan for Public Safety *is accepted.*

List of Subjects in the Public Safety Plan

Public safety, Special emergency, Trunking, Land mobile.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 89-29798 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

[GEN Docket No. 89-452; DA 89-1589]

Colorado Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Colorado Areas's (Region 7's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

1. On August 14, 1989, the Colorado Area (Region 7) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region.

2. The Region 7 plan was placed on Public Notice for comments on October 3, 1989, 54 FR 41500 (Oct. 10, 1989). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Region 7 and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Colorado.

4. Accordingly, *it is ordered* that the Public Safety Radio Plan for Region 7 is accepted. Furthermore, licensing of the 821–824/866–869 MHz band in Region 7 may commence immediately.

List of Subjects in the Public Safety Plan

Public safety, Special emergency, Trunking, Land mobile.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 89-29799 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1803]

Petitions for Reconsideration and Application for Review and Petition for Stay in Rulemaking Proceeding

December 14, 1989.

Petitions for reconsideration, application for review and petition for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed January 9, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must

be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Del Mar, California)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (San Clemente, California)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Atlus, Oklahoma) (RM–6420)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Fairbault, Blooming Prairie, Northfield and New Prague, Minnesota) (MM Docket No. 88–259, RM Nos. 5892, 6292, 6463)
Number of petitions filed: 1

Subject: Tariff F.C.C. No. 15 Competitive Pricing Plans—Holiday Rate Plan. (CC Docket No. 83–471)
Number of petitions filed: 1

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Stolen Vehicle Recovery Systems. (Gen. Docket No. 88–566, RM–6362)
Number of petitions filed: 2

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Warren Grove, Tuckerton and Manahawkin, New Jersey) (MM Docket No. 89–17, RM Nos. 6543, 6732, 6733)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Grove City, Pennsylvania and Hubbard, Ohio) (MM Docket No. 89–21, RM Nos. 6566, 6731)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Llano and Kerrville, Texas) (MM Docket No. 89–34, RM Nos. 6086, 6335)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Savannah and Cameron, Missouri) (MM Docket No. 89–36, RM Nos. 6561, 6771)
Number of petitions filed: 1

Application for Review

Subject: Amendment of section 73.606(b), Table of Allotments, FM Broadcast Stations. (Montrose and Scranton, Pennsylvania) (MM Docket No. 87–309, RM 5807)
Number of petitions filed: 1

Petition for Stay

Subject: Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and other Services. (CC Docket No. 87–120)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Faribault, Blooming Prairie, Northfield and New Prague, Minnesota) (MM Docket No. 88–259, RM Nos. 5892, 6292, 6463)
Number of petitions filed: 1

Subject: Amendment of parts 2 and 90 of the Commission's Rules to Provide for Stolen Vehicle Recovery Systems. (Gen. Docket No. 88–566, RM–6362)
Number of petitions filed: 1

Subject: Amendment of section § 73.202(b), Table of Allotments, FM Broadcast Stations. (Grove City, Pennsylvania and Hubbard, Ohio) (MM Docket No. 89–21, RM Nos. 6566, 6731)
Number of petitions filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–29765 Filed 12–21–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

December 18, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Report on Terms of Credit Card Plans
Agency form number: FR 2572
OMB Docket number: 7100–0239
Frequency: Semiannual
Reporters: Financial institutions
Annual reporting hours: 350
Estimated average hours per response: 1
Estimated number of respondents: 175
Small businesses are not affected.

General description of report:

The Board is authorized to collect the information contained in this report by Section 5 of the Fair Credit and Charge Card Act of 1988 (pub. Law No. 100–583, 102 Stat. 2960). Further, the Board may compel creditors to provide the information contained on this report pursuant to Section 136 of the Truth in Lending Act. (15 U.S.C. 1646(a)).

This semiannual report will collect credit card price and availability information from a sample of financial institutions. The sample of financial institutions will be comprised of credit card plan information from the largest 175 issuers of bank credit cards. Such issuers include commercial banks as well as thrift organizations (savings and loan assocations and savings banks). In addition, the report will include any financial institution that notifies the Federal Reserve Banks that they would like to participate. Financial institutions wishing to file the initial January 31, 1990 report, should contact the Federal Reserve Bank located in their district prior to January 1, 1990. This information will be assimilated into a report and made available to Congress and the public on a semiannual basis.

Board of Governors of the Federal Reserve System, December 18, 1989.

William W. Wiles,

Secretary of the Board

[FR Doc. 89–29747 Filed 12–21–89; 8:45 am]

BILLING CODE 6210–01–M

Citicorp; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 25.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp,* New York, New York; to engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the involuntary unemployment of the debtor pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.,* Columbus, Georgia; to engage *de novo* through its subsidiary, Universal Bank, Columbus, Georgia, in making, acquiring, and servicing credit card loans, and accepting deposits pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29748 Filed 12-21-89; 8:45 am]

BILLING CODE 6210-01-M

Exchange Bankshares Corp. of Kansas; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Exchange Bankshares Corporation of Kansas,* Atchison, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange National Bank and Trust Company of Atchison, Kansas, and thereby indirectly acquire Fort National Bank, Easton, Kansas.

In connection with this application, Applicant also proposes to acquire Bankers Exchange Life Insurance Company, Atchison, Kansas, and thereby engage as principal, agent, or broker for credit insurance directly related to extensions of credit by its subsidiary bank and limited to ensuring the repayment of the outstanding balance due on the extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29749 Filed 12-21-89; 8:45 a.m.]

BILLING CODE 6210-01-M

First American Bancshares, Inc.; Formations of, Acquisitions by, or Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become bank holding companies or to acquire a bank or bank holding company. The factors that are considered in acting on these applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the application or to the offices of the Board of Governors. Any comment on an application or to the offices of the Board of governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding these applications must be received not later than January 5, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First American Bancshares, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First American Bank, N.A., Lenexa, Kansas, a *de novo* bank, and to merge with Kansas Bancorporation, Inc., Kansas City, Kansas, and thereby indirectly acquire Home State Bank, Kansas City, Kansas; and Wyandotte Ban Corporation, Kansas City, Kansas, and The Edwardsville Bank, Edwardsville, Kansas, and The Wyandotte Bank, Kansas City, Kansas.

2. *Greeley Bancshares, Inc.*, Greeley, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Greeley, Greeley, Kansas.

Board of Governors of the Federal Reserve System, December 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29750 Filed 12-21-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the third meeting of the National Deafness and Other Communication Disorders Advisory Board on January 22, 1990. The meeting will take place from 9 a.m. to 4:30 p.m. in Building 31C, Conference Room 9 at the National Institutes of Health, Bethesda, MD.

The meeting will be open to the public and will include reports from Advisory Board subcommittees and a report from the Acting Director of the National Institute on Deafness and Other Communication Disorders (NIDCD). Attendance by the public will be limited to space available.

The Acting Executive Officer, Geoffrey Grant, NIDCD, Building 31, Room 1A03, Bethesda, Maryland 20892, (301) 402-0495, will furnish the meeting agenda, rosters of board members, and substantive program information upon request.

Date: December 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-29730 Filed 12-21-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on December 8, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Health Education Assistance Loan (HEAL) Program—Loan Application Form—0915-0038—The application is needed for students to apply for HEAL loans. Schools use the application to determine a student's eligibility and maximum approvable amount of each loan. Lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given the borrower. Respondents: Individuals or households, businesses or other for profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting:			
Applicant	29,000	32 min	1
School	400	32 min	73
Lenders	42	30 min	690

Estimated Annual Burden..... 45,434 hours

2. The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—0915-0126—Data identifying incompetent, unprofessional, and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers. Respondents: Individuals or households, State or local government, business or other for profit, Federal agencies or employees, non-profit institutions, small business or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Correction of Errors and Omissions—Sec. 60.6(a)	500	15 min	1-4
Revisions to Report Actions—Sec. 60.6(b)	2,625	15 min	1-4
Reporting Medical Malpractice Payments—Sec. 60.7(b)	1,800	30 min	20-30
Licensure Actions by Boards of Medical Examiners—Sec. 60.8(b)	125	30 min	25-40
Adverse Actions on Clinical-Privileges—Sec. 60.9(a)(3)	5,000	30 min	1-2
Reporting by Boards to the National Data Base—Sec. 60.9(b)	125	5 min	50-80
Hearings for Health Care Entities Found in Non-compliance—Sec. 60.9(c)	10	480 min	1
Recordkeeping:			
Hospital Requests for Information on Applicants—Sec. 60.10(a)(1)	7,200	5 min	15-20
Hospital Requests for Information on Current Staff—Sec. 6010(a)(2)	6,000	106 min	4-7
Disclosure to Hospitals—Sec. 60.11(a)(1)	50	5 min	1
Disclosure to Individuals—Sec. 60.11(a)(2)	138,000	15 min	1
Disclosure to Licensure Boards—Sec. 60.11(a)(3)	125	5 min	948
Disclosure to Non-hospital Entities for Hiring Purposes—Sec. 60.11(a)(4)	19,000	5 min	4
Disclosure to Attorneys and Others—Sec. 60.11(a)(5)	1,000	15 min	4-5
Disclosure to Health Care Entities for Peer Review—Sec. 60.11(a)(6)	2,500	15 min	1
Disclosure of Aggregate Data to Researchers—Sec. 60.11(a)(7)	100	20 min	1
Procedures for Filing a Dispute—Sec. 60.14(b)	600	60 min	1
Identification and Authorization of Agents	1,440	15 min	1

Estimated Annual Burden..... 152,339

3. IHS Replication, International Collaborative Study of Oral Health Outcomes (ICS–II)—NEW—IHS will participate in the ICS–II to determine the relative contributions of environmental, delivery system and personal lifestyle factors to the oral health status of Native Americans and to provide policy-makers and researchers information that may be used to improve oral health in the IHS service area. Respondents: Individuals or households.

	No. of respondents	No. of hours per response	No. of responses per respondent
Adult Survey.	600	60 min.	1
School Survey.	333	40 min.	1

Estimated Annual Burden..... 824 hours

4. Additional Standards for Anti-Human Globulin—21 CFR 660 Subpart F—0910–0208—This information collection requirement provides standards for the manufacture of Anti-Human Globulin, a product manufactured from animal sera and used in several critical tests of blood and blood components. There are currently 9 manufacturers of the product and it would be used by several thousand testing laboratories. Respondents: Businesses or other for-profit, Federal agencies or employees, small businesses or organizations; Number of Responses per Respondent: 1; Average Burden per Response: 40 hours; Estimated Annual Burden: 360 hours.

5. A Survey of National Organ Procurement and Tranplantation Network Members and Nonmembers—NEW—HRSA requires an evaluation of the OPTN to comply with Section 375 of the Public Health Service Act and to suggest possible changes to the next contract. A mail survey of the opinions of both OPTN members and nonmembers will be conducted. Respondents: Non-profit institutions, and small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Members	343	.72 hrs.	1
Nonmembers	50	.25 hrs.	1

Estimated Annual Burden..... 259 hours

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 18, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–29777 Filed 12–21–89; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 1, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Application for Benefits Under the Canada-U.S. Social Security Agreement—0960–0371—The information collected on the form SSA–1294 is used by the Social Security Administration to determine an individual's eligibility to Social Security benefits. The affected public consists of people who live in Canada and file for U.S. Social Security benefits.

Number of Respondents: 600.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 150 hours.

2. Record of SSI Inquiry—0960–0140—The information collected on the form SSA–3462 is used by the Social Security Administration to determine an individual's eligibility to supplemental security income payments and to establish a protective filing date, if an application for those payments is later filed. The respondents are persons who inquire about SSI, either for themselves or on behalf of someone else.

Number of Respondents: 571,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 47,583 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 18, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–29758 Filed 12–21–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1917; FR–2606–N–51]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 22, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC (20410; telephone (202) 755–7300; TDD number for the hearing- and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal building and real property that HUD has determined are suitable for use for facilities to assist the homeless. The property were identified from information provided to HUD by

Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Service (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excesss or made available to the homeless for use on an interim basis the property will not longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expression of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Street NW., Washington, DC 20405 (202) 535–7067.

Date: December 15, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

(Number of Properties [ ])

TEXAS

Portion of the Former Ft. Wolters [1]
Parcel 1, Palo Pinto County, Mineral Wells, TX
Landholding Agency: GSA
Location: GSA # 7–GR–TX–548AA (excess)
Comment: 57.785 acres

Suitable Building (by State)

(Number of Properties [ ])

MISSISSIPPI

Yellow Creek Site [28]
Coleman Park Road, Iuka, MS
Landholding Agency: GSA
Location: GSA # 4–Z–MS–522 (excess); Located in a remote area; 15 miles east of Corinth, MS and 9 miles north of Iuka, MS.
Comment: some with utilities; various sizes (pre-eng. metal); possible asbestos

TEXAS

Portion of the Former Fort Wolters [1]
Parker County, Mineral Wells, TX
Landholding Agency: GSA
Location: GSA # 7–GR–TX–548AA (excess)
Comment: one-story wood frame/brick veneer; 2,048 sq ft; utilities unknown;

Unsuitable Land (by State)

(Number of Properties [ ])

CALIFORNIA

Nike Site 51, Tract 101E [1]
Milagara Ridge Military Reservation, San Mateo County, CA
Landholding Agency: GSA
Location: GSA # 9–D–CA–723B (excess); Parcel 2; Line of Sight Easement
Reason: Other
Comment: no gov't owned land; easement, missile tracking airspace

TEXAS

Portion of the Former Ft. Wolters [6]
Parcels 2–7; Palo Pinto and Parker Ctys., Mineral Wells, TX
Landholding Agency: GSA
Location: GSA # 7–GR–TX–548AA (excess); 6 parcels
Reason: Floodway

[FR Doc. 89–29724 Filed 12–21–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–00–5101–YKAK]

Availability of Amoco CO_2 Projects Final Environmental Impact Statement, Wyoming and Montana

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Amoco CO_2 projects final environmental impact statement, Wyoming and Montana.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) for the Amoco CO_2 Projects for public comment. The FEIS, prepared pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA), analyzes the impacts of constructing, operating and abandoning five related projects proposed by Amoco: a new CO_2 source near Fontenelle Reservoir in southwestern Wyoming; transportation of the gas via underground pipeline to four fields, Elk Basin, Little Buffalo Basin, Beaver Creek, and Salt Creek; and injection of the gas for enhanced oil recovery (EOR) purposes. The FEIS also identifies BLM's Preferred Alternative.

DATE: Written comments on the FEIS will be accepted at the Casper District Office until Monday, January 29, 1990.

ADDRESSES: Copies of the FEIS are available from the following BLM offices:

Casper District Office, 1701 East "E" Street, Casper, WY 82601;
Rock Springs District Office, P.O. Box 1869, Rock Springs, WY 82902–1868;
Lander Resource Area Office, P.O. Box 589, Lander, WY 82520;
Rawlins District Office, P.O. Box 670, Rawlins, WY 82301;
Worland District Office, P.O. Box 119, Worland, WY 83401;
Wyoming State Office, P.O. Box 1828, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Glen Nebeker, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601, phone (307) 261–7600.

SUPPLEMENTARY INFORMATION: The five proposed projects are located almost entirely within the State of Wyoming, with the exception of a portion of the Elk Basin field which lies in southern Carbon County, Montana.

The proposed five projects covered by the FEIS include:

(1) Development of a natural source of CO_2 located in southwestern Wyoming near Fontenelle Reservoir, which includes drilling ten wells in the Raptor Field, 24 miles of gas-gathering pipelines, and construction of a 150 million standard-cubic-foot-per-day (MMSCFD) gas processing plant; (2) the Elk Basin Project which consists of construction of 178 miles of an 18-inch diameter CO_2 pipeline and construction and operation of a 150 MMSCFD recycle plant located near the Wyoming/Montana border near Powell, Wyoming; (3) the Beaver Creek Project which consists of 44 miles of a 16-inch diameter pipeline to transport the CO_2 from the main trunkline to the proposed 150-MMSCFD recycle plant which is located south of Riverton, Wyoming; (4) the Little Buffalo Basin Project, which consists of construction of a 35-mile, 16-inch diameter pipeline to carry the CO_2 from the main trunkline to a proposed 150-MMSCFD recycle plant which will be located south of Meeteetse, Wyoming; and (5) the Salt Creek Project which consists of construction of 9 miles of a 16-inch pipeline to carry CO_2 to a proposed 150-MMSCFD recycle plant which will be built to process the gas for use in EOR projects.

The FEIS is a complete document and contains an analysis of a new alternative source of CO_2, which was not analyzed in the Draft Environmental Impact Statement (DEIS), as well as corrections to the DEIS and response to letters. A Record of Decision addressing BLM's selected alternative is expected to be released sometime in the Spring of 1990.

Dated: December 13, 1989.

Gerald L. Jessen,

Acting State Director.

[FR Doc. 89–29474 Filed 12–21–89; 8:45 am]

BILLING CODE 4310–22–M

[ID–943–00–4212–13; I–16999]

Order Providing for Opening of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the mining and mineral leasing laws, except for oil and gas, which has been reserved by the exchange proponent. The lands were previously opened to surface entry under the public land laws, and continue to be open to such entry subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1597.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 7 S., R. 40 E.,
Sec. 34, E½SE¼, SE¼NE¼;
Sec. 35, SW¼NW¼.
T. 8 S., R. 40 E.,
Sec. 3, SE¼NW¼, NE¼SW¼.

The areas described aggregate 240 acres in Caribou County.

2. Subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law, the above-described lands shall be at 9:00 a.m. on January 19, 1990, opened to the mining laws and, except for oil and gas, the mineral leasing laws. All valid applications received at or prior to 9:00 a.m. on January 19, 1990, shall be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of the land described in this order under general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators since Congress has provided for such determinations in local courts.

Dated: December 12, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–29751 Filed 12–21–89; 8:45 am]

BILLING CODE 4310–GG–M

[CA–940–00–5410–ZBJG; CACA 26417]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation—conveyance of reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined to determine the suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests may be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, BLM, Federal Office Building, 2800 Cottage Way, Room E–2845. Sacramento, California 95825, (916) 978–4820.

Serial Number—CACA 26417

Mount Diablo Meridian

T. 4 S., R. 16 E.,
Sec. 13, SE¼SE¼, SW¼SE¼;
Sec. 24, NE¼NE¼, NW¼NE¼, SE¼NE¼, NE¼SE¼ (fractional);
T. 4 S., R. 17 E.,
Sec. 18, Lots 7 and 8, SE¼SW¼;
Sec. 19, Lots 1 thru 4, Lot 6, E½NW¼, NE¼SW¼.

The area described aggregate 506.32 acres in Mariposa County.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a potent or other document of conveyance of such mineral interests; or two years from the

date of filing of the application, whichever occurs first.

Dated: December 18, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-29788 Filed 12-21-89; 8:45 am]

BILLING CODE 4310-90-M

INTERSTATE COMMERCE COMMISSION

Acceptance of Mail Via FAX

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: Facsimile (FAX) transmissions should be used only for emergency/rush situations or when the Commission requests or requires a filing or other submission on short notice. Unsolicited advertising material will not be accepted. In specified matters relating to docketed proceedings, FAX transmissions will be accepted, but backup written originals with appropriate copies will also be required.

EFFECTIVE DATES: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Darlene F. Proctor, Office of the Secretary, (202) 275-7999, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The explosive growth of Facsimile (FAX) technology is rapidly changing mail patterns and office-to-office communications. The ICC has experienced both advantages and disadvantages in the use of this technology.

At this time, the Commission's rules require the filing of "an original" and a specified number of copies (see 49 CFR part 1104.3) when submitting pleadings and other documents. The original of correspondence concerning docketed proceedings is also submitted with copies which are used for filing in the Public Docket and for submission to the working office. Still other rules require filings on specified forms which may be carbon-backed and of a certain size and color (for example, BMC-91X, Insurance form).

The Commission may at some future date decide that filings by FAX will be acceptable without backup written "originals." Until then, FAX transmissions should be used only for emergency/rush situations or when the Commission requests or requires a filing or submission on short notice. The originals (and any copies) will continue to be required. Unsolicited advertising material transmitted through the FAX will not be accepted. FAX transmission should not be used as a means of submitting documents relating to matters that are not time sensitive.

Decided: December 6, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29761 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: December 19, 1989.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperative intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Tennessee Farmers Cooperative
(2) P.O. Box 3003, LaVergne, TN 37086
(3) P.O. Box 3003, LaVergne, TN 37086
(4) Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086

Noreta R. McGee,

Secretary.

[FR Doc. 89-29760 Filed —89; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate

December 19, 1989.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:
   Flynn Ready-Mix Concrete Co., East 12th Street Extension, Dubuque, IA 52001.
2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:
   (i) Aggretate Materials Co., Iowa Corporation
   (ii) Century Concrete Co., Iowa Corporation

Noreta R. McGee,

Secretary.

[FR Doc. 89-29759 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR Part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-19552, filed December 14, 1989. Kerrville Bus Company, Inc. and Texas Bus Lines, Inc.—Control—K-T Contract Services, Inc. Applicants' representative: Mike Pavlakis, P.O. Box 646, Carson City, NV 89702. Applicants Kerrville Bus Company, Inc. (Kerrville) (MC-27530), and Texas Bus Lines, Inc. (Texas) (MC-37640), both motor carriers of passengers, seek approval udner 49 U.S.C. 11343 to acquire control, by stock purchase, of K-T Contract Services, Inc. (K-T) (MC-218583), a motor passenger carrier. Kerrville and Texas each will own 50 percent of K-T's stock.

Decided: December 18, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29764 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 332X)]

CSX Transportation, Inc., Abandonment Exemption in Van Buren County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 0.62-mile line of railroad between mileposts 15.07 and 15.69, in Hartford, Van Buren County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. 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 under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employes, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 26, 1990 (unless stayed pending reconsideration). Petitions to say that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 8, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 16, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 29, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29763 Filed 12-21-89, 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 315X)]

Exemption; Burlington Northern Railroad Co.; Abandonment Exemption in LaSalle County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.41-mile line of railroad between mileposts 97.39 and 97.8, in Streater, LaSalle County, IL.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. 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 under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition is adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 21, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 2, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 11, 1990, 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: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report with addresses environmental or

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[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, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[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,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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 December 27, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 15, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29680 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 61X)]

Union Pacific Railroad Co.; Abandonment and Discontinuance of Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904: (1) Union Pacific Railroad Company's discontinuance of trackage rights over a 2.69-mile line of the Southern Pacific Transportation Company; and (2) the Union Pacific Railroad Company's abandonment of the remaining 1.26 miles of the line, in Los Angeles County, CA, subject to standard labor protective conditions and certain conditions related to post-abandonment activities.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 23, 1990. Formal expressions of intent to file an offer [1] of financial assistance unde 49 CFR 1152.27(c)(2) must be filed by January 2, 1990, petitions to stay must be filed by January 8, 1990, and petitions for reconsideration must be filed by January 18, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–33 (Sub-No. 61X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: December 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29762 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[Finance Docket No. 31568]

Northwest Iowa Gathering Lines, Inc.; Operation Exemption in Osceola County, IA

Northwest Iowa Gathering Lines, Inc. (NIGLI), has filed a notice of exemption for future operation of a 4.7-mile line of railroad it acquired from the Chicago and North Western Transportation Company (CNW) after CNW abandoned the line in Docket No. AB-1 (Sub-No. 223X), Chicago and North Western Transportation Company—Abandonment Exemption—Between Allendorf and Sibley, IA (not printed), served November 18, 1988. The line extends between milepost 252.30, near Allendorf, and milepost 257.0, near Sibley, in Osceola County, IA. NIGLI intends to rail-back the line and operate it in the future when the need arises.

Comments must be filed with the Commission and served on: T. Scott Bannister, Hanson, Bjork & Russell, 1300 Des Moines Building, Des Moines, IA 50309.

The Iowa State Historic Preservation Officer has indicated that no properties listed or eligible for listing in the National Register of Historic Places will be affected by the transaction.

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: December 19, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29883 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petition have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 2, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 2, 1990.

The petitions filed in this case are available for inspection at the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 11th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Ballantine Laboratories, Inc. (Workers)	Boonton, NJ	12/11/89	11/27/89	23,686	Electronic Test Equip.
Boise Cascade (WCIW)	Goldendale, WA	12/11/89	11/29/89	23,687	Lumber & Plywood
Bosise Cascade (WCIW)	Yakima, WA	12/11/89	11/29/89	23,688	Lumber & Plywood
Custom Drilling Fluids, Inc. (Company)	Eunice, LA	12/11/89	11/27/89	23,689	Services Drilling Mud & Chemical used in Drillin Wells
Diebold, Inc. (Workers)	Canton, OH	12/11/89	11/27/89	23,690	Bank Security Products
Dietronic, Inc. (Workers)	Spartanburg, SC	12/11/89	11/28/89	23,691	Men & Women Belts
Elco Dress Co., Inc. (ILGWU)	New Bedford, MA	12/11/89	9/19/89	23,692	Ladies' Dresses
Etonic-Tretoen (Workers)	Auburn, ME	12/11/89	12/1/89	23,693	Casual Sneakers
Evan Picone (ILGWU)	North Bergen, NJ	12/11/89	11/28/89	23,694	Ladies' Sportswear
Evyan Perfumes, Inc. (Workers)	New York, NY	12/11/89	11/25/89	23,695	Perfumes & Colognes
Exide Corp. (UAW)	Logansport, IN	12/11/89	11/30/89	23,696	Lead Acid
Frank Money, Inc. d/b/a West Texas Pipe & Steel (Workers)	Odessa, TX	12/11/89	11/30/89	23,697	Used Oilfield Tubular Goods
Gemoco (Workers)	Houma, LA	12/11/89	11/28/89	23,698	Oilfield Equip.
Home Petroleum Inc. (Workers)	Denver, CO	12/11/89	11/28/89	23,699	Oil & Gas
Home Petroleum Inc. (Workers)	Geary, OK	12/11/89	11/28/89	23,700	Oil & Gas
Home Petroleum Inc. (Workers)	Plaza, ND	12/11/89	11/28/89	23,701	Oil & Gas
Home Petroleum Inc. (Workers)	Rock Springs, WY	12/11/89	11/28/89	23,702	Oil & Gas
Home Petroleum Inc. (Workers)	Houston, TX	12/11/89	11/28/89	23,703	Oil & Gas
Home Petroleum Inc. (Workers)	Gillette, WY	12/11/89	11/28/89	23,704	Oil & Gas
Mercury Marine (Workers)	Stillwater, OK	12/11/89	11/28/89	23,705	Stern Drives & Power Units
Mt. Carmel Fashions (Workers)	Girardville, PA	10/20/89	9/20/89	23,706	Ladies' Blouses
National Semiconductor (Workers)	Tucson AZ	12/11/89	11/28/89	23,707	Integrated Circuits & Hybrid Circuits
Powerex, Inc. (Workers)	Youngwood, PA	12/11/89	11/28/89	23,708	Semiconductors
Powerex, Inc. (Workers)	Auburn, NY	12/11/89	11/28/89	23,709	Semiconductors
Republic Metal Products (Workers)	Hillside, NJ	12/11/89	11/29/89	23,710	Metal Cabinets
Signetics Co. (Workers)	Albuquerque, NM	12/11/89	11/28/89	23,711	Semi-conductor, Circuits, Microprocessors, Etc.
Solray Mfg., Corp (ILGWU)	New York, NY	12/11/89	12/4/89	23,712	Womens' Sweat Tops
TFM Industries, Inc. (Fire Islander) (ACTWU)	Jersey City, NJ	12/11/89	11/28/89	23,713	Ladies' Sportswear
TRU-Stitch (Workers)	Bombay, NY	12/11/89	11/24/89	23,714	Slippers
Wacker Oil, Inc. (Workers)	Midland, TX	12/11/89	12/1/89	23,715	Oil & Gas

[FR Doc. 89-29804 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 159]

Teleflex Inc., Marine Division, Limerick, PA; Affirmative Determination Regarding Application for Reconsideration

By a letter dated October 2, 1989, Local #644 of the United Auto Workers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Teleflex, Incorporated, Marine Division, Limerick, Pennsylvania. The negative determination was issued on September 6, 1989 and published in the Federal Register on October 3, 1989 (54 FR 40755).

The union questioned the accuracy of the Department's survey and stated that the Limerick facility of Teleflex Inc., has been adversely affected because their domestic competitors import subassemblies and other component parts.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29781 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits

have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

District of Columbia:
DC89-1 (Jan. 6, 1989) ..... p. 77, pp. 82, 84.
Kentucky:
KY89-1 (Jan. 6, 1989) ..... p. 293, p. 294.
KY89-29 (Jan. 6, 1989) ..... p. 370a, pp. 370d, 370m.
Massachusetts:
MA89-1 (Jan. 6, 1989) ..... p. 371, pp. 373-374, and pp. 376-377.
MA89-2 (Jan. 6, 1989) ..... p. 387, pp. 388-391.
MA89-3 (Jan. 6, 1989) ..... p. 401, pp. 402-404.
Maryland:
MD89-1 (Jan. 6, 1989) ..... p. 411, p. 412.
Pennsylvania:
PA89-9 (Jan. 6, 1989) ..... p. 925, pp. 926-927.
Virginia:
VA89-35 (Jan. 6, 1989) ..... p. 1188w, p. 1188x.

Volume II:

Arkansas:
AR89-1 (Jan. 6, 1989) ..... p. 3, p. 4.
AR89-8 (Jan. 6, 1989) ..... p. 20a, p. 20b.
Iowa:
IA89-3 (Jan. 6, 1989) ..... p. 33, pp. 34.
IA89-4 (Jan. 6, 1989) ..... p. 37, p. 38.
IA89-13 (Jan. 6, 1989) ..... p. 67, p. 68.
Illinois:
IL89-8 (Jan. 6, 1989) ..... p. 145, p. 147.
IL89-9 (Jan. 6, 1989) ..... p. 151, pp. 152-154.
Indiana:
IN89-2 (Jan. 6, 1989) ..... p. 257, pp. 261-268, and pp. 271-275.
Ohio:
OH89-2 (Jan. 6, 1989) ..... p. 787, pp. 791, 803, and p. 804.
OH89-29 (Jan. 6, 1989) ..... p. 869, p. 875.
OH89-34 (Jan. 6, 1989) ..... p. 912a, p. 912b.

Volume III:

California:
CA89-2 (Jan. 6, 1989) ..... p. 43, pp. 43-44, and pp. 46-64f.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th Day of December 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-29646 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-186-C]

Foley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Foley Coal Co., Route 1, Box 157, Woodbine, Kentucky 40771, has filed a petition to modify the application of 30 CFR 75.313, Methane monitor, to its Mime #1 (I.D. No. 15-16713) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition. In further support of this request, petitioner states that:

(a) No methane has been detected in the mine.

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elasped time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1990. Copies of the petition are available for inspection at that address.

Dated: December 14, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29782 Filed: 12-21-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-26-M]

Helca Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Helca Mining Company, P.O. Box 31, Mullan, Idaho 83846 has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that upon completion of the initial training, all team members are required to receive at least 40 hours of refresher training annually. This training is required to be given at least 4 hours each month, or for a period of 8 hours every two months.

2. Petitioner states that requiring at least 4 hours of refresher training each month or 8 hours every two months would result in a diminution of safety for the underground personnel because most of the experienced mine rescue personnel would resign.

3. In support of this request, petitioner states that—

(a) Most of the rescue team personnel are veterans; and

(b) Adequacy of training cannot be measured in hours spent in training. Performance and knowledge are the only valid criteria.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1990. Copies of the petition are available for inspection at that address.

Dated: December 15, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29783 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-177-C]

Oneida Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Oneida Coal Company, Inc., Route 2, Box 72, Sutton, West Virginia 26601 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 16 (I.D. No. 46-07757) located in Webster County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a locked padlock be used to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a thumb screw in lieu of padlocks. The metal locking devices would be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening. The metal locking devices would be securely attached to battery receptacles to prevent accidental loss of the devices.

3. These locking devices would be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification would be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1990. Copies of the petition are available for inspection at that address.

Dated: December 15, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29784 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory

Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* January 11, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Access and Tools categories in the fields of World History and Social Sciences, for projects beginning after July 1, 1990.
2. *Date:* January 11–12, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
3. *Date:* January 12, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Visual Arts and Architecture, for projects beginning after July 1, 1990.
4. *Date:* January 16, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
5. *Date:* January 18, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Performing Arts, for projects beginning after July 1, 1990.
6. *Date:* January 19, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Tools category in the field of Linguistics, for projects beginning after July 1, 1990.
7. *Date:* January 22, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Tools and Access categories in the fields of American Studies I, for projects beginning after July 1, 1990.
8. *Date:* January 22–23, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
9. *Date:* January 23, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 316–2
   Program: This meeting will review applications for Interpretive Research/Humanities, Science and Technology applications for Guided Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.
10. *Date:* January 25, 1990
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 316–2
    Program: This meeting will review Interpretive Research/Projects applications for U.S. and World History, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.
11. *Date:* January 26, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications submitted to the Access and Tools categories in the field of American Studies II, for projects beginning after July 1, 1990.
12. *Date:* January 29, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications submitted to the Access and Tools categories in the field of Literature, for projects beginning after July 1, 1990.
13. *Date:* January 29–30, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 415
    Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
14. *Date:* January 30, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 316–2
    Program: This meeting will review applications Interpretive Research/Humanities, Science and Technology, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.
15. *Date:* January 30, 1990
    Time: 9 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after August 1, 1990.

Catherine Wolhowe,

Advisory Committee, Management Officer (Alternate).

[FR Doc. 89–29789 Filed 12–21–89; 8:45 am]

BILLING CODE 7536–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Approval for Information Collection: Reporting and Notification Requirements for Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB reinstatement of previously approved collection.

SUMMARY: The Pension Benefit Guaranty Corporation has requested reinstatement by the Office of Management and Budget of a previously approved collection (OMB control number 1212–0013) for which approval has expired. There is no change in the substance of the information to be collected or in the method of collection. The information collection is prescribed by sections 4043 and 4065 of the Employee Retirement Income Security Act of 1974 and is contained in the PBGC's regulation on Reporting and Notification Requirements for

Reportable Events, 29 CFR part 2615. This notice advises the public of the PBGC's request for OMB reinstatement of this previously approved collection of information.

ADDRESSES: Written comments (at least three copies) should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 3208, Washington, DC 20503. Requests for information and copies of the proposed collection of information and supporting documentation, should be addressed to the Communications and Public Affairs Department (Code 38000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The request for reinstatement will be available for public inspection, and copying, at the PBGC Communications and Public Affairs Department in Suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8851 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget reinstate for a three-year period the approval of the collection of information contained in the PBGC's regulation on Reporting and Notification Requirements for Reportable Events, 29 CFR Part 2615.

Section 4043(b) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1301 *et seq.* ("ERISA"), sets forth ten events that pension plan administrators must report to the PBGC after the event occurs. The statute also gives the PBGC authority to add additional reportable events, to waive reporting of any event, and to require that a waived event be reported on the plan's annual report (IRS/DOL/PBGC Form 5500 Series).

Section 4065 of ERISA provides that these reportable events be included in the plan's annual report except to the extent waived by the PBGC. In its regulation on reportable events, the PBGC added three additional events to be reported, modified four of the events to narrow the reporting requirements, waived reporting of six of the events, and waived the requirement that any of the reportable events be included on the plan's annual report.

This information collection was previously approved by OMB control number 1212–0013, and the PBGC is requesting that the previous approval be reinstated. There is no change in the substance or in the method of collection of information.

An event that must be reported to the PBGC occurs only upon the occasion of an infrequent or nonrecurring event and, based on its experience, the PBGC expects to receive 200 reports annually. The public reporting burden for this collection of information is estimated to average one-half hour per report, for a total annual burden of 100 hours.

Issued at Washington, DC this 18 day of December, 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–29744 Filed 12–21–89; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27534; [SR–ICC–89–4]

Self-Regulatory Organizations; Notice of Filing and Order Temporarily Approving, on an Accelerated Basis, a Proposed Rule Change by the Intermarket Clearing Corporation Relating to Member Net Capital Requirements

December 13, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 1989, the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change [3] that would increase initial and maintenance adjusted net capital requirements imposed by ICC on its members.[4] To reflect these increases, the proposal also would amend ICC's rule regarding restrictions on member distributions. The Commission is publishing this Order to solicit comments on the proposal from interested persons. This Order also temporarily approves the proposal on an accelerated basis until March 1, 1990.

I. Description of the Proposal

As noted above, the proposal would increase ICC's initial and maintenance adjusted net capital requirements.[5] Currently, to become an ICC member, an applicant must have initial adjusted net capital equal to at least $150,000. That level must be maintained by the applicant for the lesser of three months after its admission as a clearing member or twelve months after it commenced doing business subject to Commission or CFTC regulation, after which the member must maintain adjusted net capital equal to at least $100,000. Under the proposal, a member's initial adjusted net capital requirement would be increased to $1 million, and its maintenance adjusted net capital requirement would be increased to $750,000. ICC represents that all of its members currently have adjusted net capital meeting the proposed requirements.

The proposal also would amend ICC's rule regarding restrictions on member distributions. Currently, ICC's rules prohibit a member from effecting a withdrawal or payment to shareholders, partners, or employees if that withdrawal or payment would reduce the member's adjusted net capital below $150,000. The proposal would prohibit a member distribution if the effect of the distribution would reduce the member's net capital below $1 million.

ICC does not believe the proposed rule change would have any material impact on competition. Written comments were not and are not intended to be solicited by ICC with respect to the proposal and none have been received by ICC.

II. ICC's Rationale for the Proposed Rule Change

ICC believes the proposal is consistent with the purposes and requirements of section 17A of the Act.[6] Specifically, ICC believes the proposed net capital increases promote the continued financial integrity of ICC's clearance and settlement system, particularly in light of events

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[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The proposal was originally filed pursuant to section 19(b)(3)(A) of the Act. At the request of Commission staff, ICC refiled the proposal pursuant to section 19(b)(2) of the Act, requesting accelerated approval of the proposal.

[4] ICC's proposed net capital requirements have been approved by the Commodity Futures Trading Commission ("CFTC"). *See* Letter from John C. Lawton, Associate Director, CFTC, to James C. Yong, Assistant Secretary, ICC, dated October 12, 1989. The Commission has approved similar net capital requirement changes for ICC's parent, the Options Clearing Corporation. *See* Securities Exchange Act Release No. 26840 (May 19, 1989), 54 FR 23004.

[5] ICC adjusted net capital requirements are computed in accordance with CFTC Regulation 1.17. *See* 17 CFR 1.17 (1989).

[6] 15 U.S.C. 78q–1 (1982).

surrounding the October 1987 market break ("Market Break"). ICC further believes the proposal brings ICC financial requirements in line with those of other commodity clearing organizations.[7]

III. Discussion

The Commission believes the proposal is consistent with section 17A of the Act and therefore is approving the proposal. Specifically, the Commission believes the proposal is designed to implement post-Market Break recommendations that clearing agencies update their net capital requirements to reflect current market conditions, particularly increased market volatility.[8] The proposal is designed to achieve that goal without inhibiting broad market participant access to ICC services.

In its Market Break Report, the Commission's Division of Market Regulation ("Division") encouraged clearing agencies to consider increasing member net capital requirements. Specifically, the Division noted:

> In light of the failures experienced by a number of clearing member customers during the market break and the apparent increased risk caused by market volatility, clearing agencies should consider strengthening their member net capital standards or instituting additional financial requirements * * *.[9]

The Commission believes re-examination and strengthening of clearing agency rules establishing member net capital requirements serve as a further layer of protection against member default.

The Interim Report of the Working Group on Financial Markets ("Working Group Report") made a similar recommendation.[10] The Working Group Report noted clearing agency progress in evaluating the adequacy of member capital and specifically cited clearing agency plans to increase member net capital requirements. The Working Group also encouraged the Commission, clearing agencies, and other self-regulatory organizations to continue to evaluate the adequacy of member capital and find ways to improve existing practices and requirements.[11]

Post-Market Break studies also suggested that clearing agencies analyze negative aspects of increased member net capital requirements. For example, the Division cautioned:

> Although increased capital requirements for clearing members could strengthen clearing member financial positions and decrease default risk, especially during periods of high market volatility, such requirements also would have other effects * * * [I]ncreased clearing agency requirements could decrease the number of broker-dealers eligible for clearing agency membership and increase costs for broker-dealers that cannot maintain membership.[12]

The Commission believes clearing agencies, in adopting increased net capital requirements, should strike a prudent balance between their need to ensure member creditworthiness and their responsibility to provide broad market participant access to clearing services.

The Commission believes the proposal, consistent with post-Market Break recommendations, is designed to update ICC net capital requirements to reflect current market conditions. ICC net capital requirements are designed to ensure that members initially and throughout their membership have sufficient liquid assets to meet their obligations to ICC. ICC has not increased these requirements since it commenced operations in 1985,[13] despite increased market volume, complexity, and volatility. The Commission believes the proposed initial and maintenance net capital requirements are designed to reflect market developments and ensure ICC member creditworthiness in the current market environment. The Commission further notes that the proposed amendment to the rule regarding restrictions on member distributions conforms to proposed initial and maintenance adjusted net capital increases and, therefore, is designed to reflect current market conditions and facilitate effective risk management. Moreover, the fact that all ICC members have adjusted net capital levels meeting the proposed requirements indicates the proposal is not designed to inhibit broad market participant access to ICC services.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** because the proposal will enable ICC to update promptly its net capital requirements to reflect current market conditions. Nevertheless, the Commission is approving the proposed rule change temporarily until March 1, 1990. Temporary approval will enable ICC to implement the proposal and will enable interested persons to comment on the proposal. Although, as noted above,[14] interested persons have had an opportunity to comment on the proposal in connection with the CFTC's consideration of the proposal, the Commission believes an additional opportunity for comment on the proposal may be worthwhile.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written comments should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–ICC–89–4) and any subsequent amendments also will be available for inspection and copying at ICC's principal office. All submissions should refer to file number SR–ICC–89–4 and should be submitted by January 12, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–ICC–89–4) be, and hereby is, approved on a temporary basis until March 1, 1990.

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[7] Board of Trade Clearing Corporation members must maintain $1.5–3.5 million in net capital if they are firms and $500,000 in net capital if they are individuals. Chicago Mercantile Exchange clearing members must maintain $1.5 million in net capital. *See* R. Rutz, Clearance, Payment, and Settlement Systems in the Futures, Options, and Stock Markets (February 24, 1989) at 16.

[8] *See* Division of Market Regulation, the October 1987 Market Break (February 1988) ("Market Break Report"), and Interim Report of the Working Group on Financial Markets (May 16, 1988) ("Working Group Report").

[9] *See* Market Break Report, *supra* note 8, at 10–27.

[10] *See* Working Group Report, *supra* note 8, at 15.

[11] *Id.* Other self-regulatory organizations have increased their net capital requirements in response to post-Market Break suggestions. For example, on May 6, 1988, the Commission approved, on an accelerated basis, a New York Stock Exchange ("NYSE") proposal increasing minimum net capital requirements for NYSE specialists. *See* Securities Exchange Act Release No. 25677 (May 6, 1988), 53 FR 17286.

[12] *See* Market Break Report, *supra* note 8, at 10–27. The Working Group also encouraged clearing agencies to analyze the costs and benefits of net capital increases. *See* Working Group Report, *supra* note 8, at 15.

[13] See Securities Exchange Act Release No. 21706 (February 4, 1985), 50 FR 5341.

[14] *See* note 4, *supra*.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29739 Filed 12-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27533; File No. SR-MSE-89-7)

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to Reduced Time Frames for Claiming Certain Reports

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 5, 1989 the Midwest Stock Exchange, Incorporated ("MSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSE has proposed to amend Article XXX, Rule 15 by reducing the time frames within which members may claim certain reports, including reports of erroneous trade comparisons, from 5 days to 3 days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The amendment to Article XXX, Rule 15 reduces the time from five to three days in which members can make a claim for certain reports. These include claims which involve erroneous comparisons, omission of a report due and lack of comparison of a reported transaction. The Exchange believes that the shorter time frames will help to expedite the trade resolution process without placing excessive burdens upon the members.

The proposed rule change is consistent with Section 6(b) of the Act, as amended, in that it is designed to foster prompt and accurate reporting among persons engaged in the clearing, settling and processing of information relating to transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File Number SR-MSE-89-07 and should be submitted by December 13, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29373 Filed 12-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27544; File No. SR-NASD-89-57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to NASDAQ/National Market System Issuer Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 5, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule provides that the issuer of each security designated for inclusion in the NASDAQ/National Market System shall pay an annual participation fee of $2,000 in addition to the annual fee specified at Section B.1. of Part IV of Schedule D to the NASD By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule provides that the issuer of each NASDAQ/National Market System security will pay an annual participation fee of $2,000, in addition to the annual fee specified at Section B.1. of Part IV of Schedule D to the NASD By-Laws. The fee will be used to support the continued expansion and technological enhancement of NASD's market surveillance system, StockWatch, and the doubling of Market Surveillance staff during the five-year period FY1986–90. The new fee will also be used to support additional services to NASDAQ/National Market System issuers, increase marketing efforts to heighten investor interest in the NASDAQ Market, and efforts to obtain state registration exemptions for NASDAQ/National Market System securities.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will: A. by order approve such proposed rule change, or B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–89–57 and should be submitted by December 13, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: December 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29738 Filed 12–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–25000]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 15, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 8, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company (70–7504)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue NE., Atlanta, Georgia, 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration with this Commission pursuant to sections 6, 6(b), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50 and 50(a)(5) thereunder.

By Commission orders dated April 11, 1988 (HCAR No. 24621), July 19, 1988 (HCAR No. 24680), May 8, 1989 (HCAR No. 24882) and November 29, 1989 (HCAR No. 24991) Georgia was authorized, among other things, on or before December 31, 1989, to: (1) Issue and sell short-term notes to banks and commercial paper to dealers in an aggregate principal amount at any one time outstanding of up to $1 billion; (2) issue and sell at competitive bidding up to $600 million of fixed rate, first mortgage bonds ("Bonds") in one or more series; (3) issue and sell up to $125 million of term-loan notes ("Term-Loans"); (4) issue and sell up to an aggregate of $50 million of pollution control revenue bonds ("Revenue Bonds") pursuant to an exception from competitive bidding; and (5) begin negotiating the terms and conditions of up to $250 million aggregate principal amount of variable rate first mortgage bonds ("Variable Bonds"). Jurisdiction was reserved, through December 31, 1989, over: (a) The issuance and sale of first mortgage bonds with a variable rate; (b) the financing of pollution control facilities in an amount of up to $100 million; (c) the issuance and sale at competitive bidding of up to $175 million of preferred stock; (d) the common stock dividend restriction in connection with the issuance of the Bonds and Variable Bonds; and (e) the issuance of an insurance policy guaranteeing payment of the Bonds and Variable Bonds. The aggregate amount of all Bonds, Variable Bonds, Preferred Stock, Revenue Bonds and Term-Loans to be issued and sold was not to exceed $1,050,000,000.

Georgia now seeks authorization, through December 31, 1990, to: (1) Issue and sell short-term notes to banks and commercial paper to dealers in an aggregate principal amount at any one time outstanding of up to $1 billion; (2) issue and sell at competitive bidding up to $450 million of Bonds and/or Variable Bonds in one or more series; (3) issue and sell up to $125 million of Term-Loans; (4) finance pollution control facilities in an amount of up to $100 million; (5) issue and sell at competitive bidding up to $175 million of preferred stock; (6) issue an insurance policy guaranteeing payment of the Bonds and Variable Bonds; and (7) deviate from both the redemption provisions and the dividend limitation provisions of the Commission's 1956 Statement of Policy Regarding First Mortgage Bonds.

Entergy Corporation, et al. (70–7602)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112 have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and Rule 43 thereunder.

On February 3, 1989 (HCAR No. 24813), this Commission authorized LP&L to issue and sell to Entergy, and Entergy to purchase, from time to time through December 31, 1989, up to 18,961,000 additional shares of LP&L's authorized but unissued common stock, without nominal or par value ("Additional Shares"). LP&L anticipates that, by December 31, 1989, none of the Additional Shares will have been sold.

Based upon LP&L's revised estimate of cash requirements and its financing plan, it may be necessary or desirable for LP&L to issue and sell the Additional Shares to Entergy during the period through December 31, 1990. LP&L requests authority, through December 31, 1990, to issue and sell from time to time, and Entergy may purchase, an aggregate of up to 18,961,000 of the Additional Shares for an aggregate cash purchase price not to exceed $125 million. Proceeds from such sales will be used by LP&L for the financing, in part, of the retirement of its first mortgage bonds and/or preferred stock, for its construction program and for other corporate purposes.

Vermont Yankee Nuclear Power Corporation (70–7635)

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), Ferry Road, Box 169, Brattleboro, Vermont 01301, a wholly owned subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed an application under section 6(b) of the Act and Rules 50 and 50(a)(5) thereunder.

By prior Commission order, Vermont Yankee was authorized to borrow under a $75 million Eurodollar revolving credit facility, which it now proposes to amend and extend through 1994 (HCAR No. 23858, October 7, 1985). The Amended and Extended Eurodollar Credit Agreement ("Credit Agreement") would have a five-year term ending December 31, 1994. It also provides for up to three one-year extensions of that term. This revolving credit facility would permit borrowings in an aggregate principal amount at any one time outstanding of not more than $75 million. Such borrowings would be evidenced either by promissory notes ("Notes") to a group of major domestic and international banks ("Bank") pursuant to the Credit Agreement with Societe Generale as agent bank ("Agent Bank") for the other Banks or by commercial paper notes ("Commercial Paper") to be sold to Citicorp Securities Markets, Inc., as placement agent, for resale to its customers. The Commercial Paper would be supported by irrevocable letters of credit issued by the Agent Bank which will result in the Commercial Paper having the highest available rating and therefore the lowest commercial paper cost. The Notes and Commercial paper will be secured by a second mortgage on Vermont Yankee's plant.

The letter of credit facility would require a fee of ½ of 1% per annum on the average daily outstanding amount of letters of credit. Vermont Yankee will also pay a commitment fee during the term of the Credit Agreement of ¼ of 1% per annum of the unused portion of the total facility and will pay additional fees and expenses.

The revolving credit facility would permit Vermont Yankee to select from time to time interest periods of one, two, three or six months' duration for each revolving credit loan. The interest rate on each revolving credit loan will be either the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected, plus ½ of 1%, or the adjusted certificate of deposit rate, plus ⅝ of 1%; in each case the interest rate being established by the arithmetic average of the rates of three representative lending banks.

Based on prevailing rates on November 1, 1989; assuming a one-month LIBOR of 8.75% and borrowing of $75 million, the effective cost of borrowings would be 9.25%; assuming a one-month adjusted certificate of deposit rate of 8.945%, and borrowing of $75 million, the effective cost of borrowings would be 9.57%; assuming a 30-day commercial paper rate of 8.62%, use of the letter of credit facility would have an effective cost of 9.27%.

Additionally, Vermont Yankee requests authority to issue and sell through private placement its first mortgage bonds in principal amounts of up to $25 million. The $25 million of Series G First Mortgage Bonds ("Bonds") would be issued under Vermont Yankee's First Mortgage Indenture, dated as of October 1, 1970, as amended and supplemented. The Bonds will mature January 1, 1995 and will bear interest at the rate of 8.94% per annum, payable semi-annually on January 1 and July 1. There will be no sinking fund; however, Vermont Yankee will have the right to prepay the Bonds at any time at par plus accrued interest and a premium, if applicable, designed to protect the reinvestment yield of the holders.

The purpose of these financings, which replace an existing revolving credit agreement and a recently terminated credit facility, is to meet Vermont Yankee's short term financing requirements for its general corporate expenditures, including fuel costs, spent fuel disposal fees and plant additions.

Vermont Yankee requests an exception from the competitive bidding requirements of Rule 50 for the proposed sale of Commercial Paper, pursuant to paragraph (a)(5).

West Penn Power Company (70–7637)

West Penn Power Company ("WPP"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, a subsidiary of Allegheny Power System, Inc., a registered holding company, has filed an application under sections 6, and 6(b), of the Act and Rule 50(a)(5) thereunder.

WPP proposes to issue and sell short-term notes from time to time to banks and to dealers in commercial paper through December 31, 1991, in an aggregate principal amount not to exceed $134 million. This amount includes any short-term debt still outstanding under the Commission's prior authorization, which was outstanding in the approximate amount of $6.2 million on November 15, 1989 (HCAR No. 24256, December 8, 1986).

Each note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater than the then current prime commercial credit or

equivalent interest rate of the bank at which the borrowing is made. The notes may or may not have prepayment provisions. WPP and its affiliates have agreed to pay for lines of credit with a group of banks by maintaining compensating balances (no greater than 2.5% of all or a portion of the line of credit) and/or by paying an annual cash fee (no greater than ⅛% of all or the balance of the line of credit.)

The commercial paper will not be prepayable and will have varying maturities, none more than 270 days. The notes will be sold directly to the dealer and/or placement agent at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance and sale of commercial paper notes.

The proceeds from the borrowings will be used to operate its business as an electric public utility, including the financing of construction and property acquisition.

New England Electric System (70–7723)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

NEES proposes to make, from time-to-time through December 31, 1990, one or more capital contributions to Massachusetts Electric Company ("Mass. Electric") and Narragansett Electric Company ("Narragansett"), both wholly owned subsidiaries of NEES, not to exceed an aggregate amount of $50 million for Mass. Electric and $20 million for Narragansett.

Mass. Electric and Narragansett will apply the funds received from the capital contributions for general corporate purposes including, but not limited to, the cost of, the reimbursement of the treasury for, or the payment of short-term borrowings incurred for, capital additions and improvements to plant and property.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29736 Filed 12–21–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89–099]

Navigation Safety Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Navigation Safety Advisory Council (formerly the Rules of the Road Advisory Council). This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the prevention of collisions, rammings, groundings, including but not limited to International/Inland Rules of the Road, Navigation Regulations and Equipment; Routing Measures; Diving Safety; and Aids to Navigation Systems.

DATES: Requests for applications should be received by the Coast Guard no later than January 30, 1990. Applications must be completed and returned to the Coast Guard no later than March 2, 1990.

ADDRESS: Persons interested in applying should write to Commandant (G–NSR–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Thomas J. Meyers, Executive Director, Navigation Safety Advisory Council, (G–NSR–3), Room 1416, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0357.

SUPPLEMENTARY INFORMATION: In June 1990, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before March 2, 1990, and thereafter make recommendations to the Secretary. Under the Inland Navigation Rules Act and to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry, (3) individuals with an interest in maritime law, and (4) Federal and state officials with responsibility for vessel and port safety. The Coast Guard Authorization Act of 1989 changed the name of the Rules of the Road Advisory Council to the Navigation Safety Advisory Council, and extended the Council through September 30, 1995. The Act also broadened the scope by expanding the Council's task to advise the Secretary of Transportation on matters relating to the prevention of collisions, rammings, groundings, including but not limited to International/Inland Rules of the Road, Navigation Regulations and Equipment; Routing Measures; Diving Safety; and Aids to Navigation Systems. The Coast Guard will maintain a balanced representation in the four membership groups with an interest in seeking individuals with background and experience relating to these additional tasks.

The Council will meet not less than twice during each calendar year. Members are entitled to receive per diem in lieu of subsistence, as well as to be reimbursed for travel expenses, in accordance with current regulations. The seven new appointments will expire three years from June 1990.

Dated: December 13, 1989.

R.T. Nelson,

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

[FR Doc. 89–29735 Filed 12–21–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–105]

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). The meeting will be held on January 25–26, 1990 in Room 2230 at Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC. The meeting is scheduled to begin at 9:00 am and end at 5:00 pm each day. Attendance is open to the public. Topics on the proposed agenda are as follows:

A. Licensing Alternatives

1. Discussion of Subcommittee on Licensing Alternatives Report
2. Development of Recommndations to USCG

B. Third Party Approach to Regulation Enforcement

C. Crane Certification

1. By OSHA
2. By USCG

D. Tonnage Study

1. Impacts
2. Development of recommendations

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Vessel Advisory Committee, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2967.

Dated: December 15, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–29733 Filed 12–21–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–106]

Commercial Fishing Industry Vessel Advisory Committee, Subcommittee on Licensing Alternatives; Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Licensing Alternatives of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). The meeting will be held on January 24, 1990 in Room 2230 at Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. Topics on the proposed agenda are as follows:

A. Discussion of Licensing Alternatives Report

B. Development of Recommendations t the Main Committee

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Vessel Advisory Committee, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2967.

Dated: December 15, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–29734 Filed 12–21–89; 8:45 am]

BILLING CODE 4910–14–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

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).

BLACKSTONE RIVER VALLEY, NATIONAL HERITAGE CORRIDOR COMMISSION

Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 4, 1990.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Grafton Municipal Building, 30 Providence Road (Route 122), Grafton, Massachusetts for the following reasons:

1. Report of the Chairman;
2. Report of the Executive Director;
3. Report of the Treasurer;
4. Committee Reports;
5. Report on the Cultural Heritage and Land Management Plan;
6. Discussion of Orientation Program for Ad Hoc Committees on Plan Implementation;
8. Discussion of Policy for Responding to Requests Made to Commission;
9. Discussion of Commission Staffing/ Consulting Needs;
10. Public Comments.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278–9400 or (508) 278–5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89–29911 Filed 12–20–89; 3:07 am]

BILLING CODE 4310–70–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 19, 1989, 9:30 a.m.

PLACE: 999 E Street NW., Washington, D.C.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission held a special closed meeting for the purpose of considering the selection of an Inspector General, pursuant to 11 CFR 2.4(b)(1).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Federal Election Commission.

[FR Doc. 89–29917 Filed 12–20–89; 3:08 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 51971, December 19, 1989].

STATUS: Open meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, December 14, 1989.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting to be held on Thursday, December 21, 1989, at 11:00 a.m.:

Consideration of whether to grant Delta Government Options Corp. registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272–2388 or Gordon K. Fuller at (202) 272–2414.

Please also note that the open meeting on the above date has been rescheduled from 10:00 a.m. to 11:00 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272–2400.

Dated: December 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29836 Filed 12–19–89; 4:45 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 90365-9065]

Proposed Revision of FIPS PUB 151, Posix; Portable Operating System Interface for Computer Environments

Correction

In notice document 89-8814 beginning on page 14829 in the issue of Thursday, April 13, 1989, make the following correction:

On page 14831, in the first column, in the third complete paragraph, in the second line, remove "October 13, 1989" and insert "6 months after publication in the Federal Register".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

Correction

In proposed rule document 89-28157 beginning on page 49763 in the issue of Friday, December 1, 1989, make the following corrections:

1. On page 49763, in the third column, in the third line, "NCR" should read "NRC".

2. On page 49764, in the first column, under "*Section 170.11 Exemptions*", in the seventh line, insert "the" after "under".

3. On the same page, in the same column, under "*Section 170.11 Exemptions*", in the second paragraph, in the 12th line, "institutions" should read "institution".

4. On the same page, in the second column, under "*Section 170.12 Payment of Fees*", in the second paragraph, in the fourth line, "were" should read "where".

5. On the same page, in the third column, in the last complete paragraph, in the first line, insert "which" after "method".

6. On page 49766, in the first column, under "**VI. REGULATORY ANALYSIS**, in the fourth line, "(32 U.S.C. 9701) should read (31 U.S.C. 9701).

7. On the same page, in the third column, in the fourth complete paragraph, in the fifth line, "533" should read "553".

8. On page 49767, in the third column, under § 170.12(h), in the seventh line, "licenses" should read "licensees".

9. On page 49768, in the second column, in the table of "Schedule of Materials Fees", under entry 1.A., in the fifth line, "ore" should read "more".

10. On the same page, in the same column, in the same table, under entries 1.C. and 1.D., in the sixth and ninth lines after the "colon" add footnote 4.

11. On page 49769, in the third column, in the same table, under entry 3.O., in the fifth line, after the "colon" add footnote 5.

12. On page 49770, in the first column, the entry for 5.A. should read "Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:"

13. On the same page, in the same column, the entry for 5.B. should read "Licenses specifically authorizing use of byproduct material for field flooding tracer studies:"

14. On the same page, in the same column, under entry 7.B., in the 12th line, "devices" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 13, 21, 67, 137, 199

[Docket No. 26020; Amdt. Nos. 11-32, 21-67, 129-19, 137-13, 199-2]

RIN 2120-AD24

Organizational Changes and Delegations of Authority

Correction

In rule document 89-22317 beginning on page 39288 in the issue of Monday, September 25, 1989, make the following corrections:

§ 11.25 [Corrected]

1. On page 39290, in the first column, under § 11.25, in the first line, "11.25(b)(iv)" should read "11.25(b)(2)(iv)".

§ 21.215 [Corrected]

2. On page 39291, in the first column, under § 21.215, in the first line, "Application" should read "Applications".

§ 67.19 [Corrected]

3. On page 39292, in the first column, under § 67.19, in the last line, "Managers" should read "Manager".

§ Appendix A to Part 129 [Corrected]

4. On page 39294, in the first column, under "Appendix A to Part 129", in the second line, "(0)" should read "(b)".

§ 137.77 [Corrected]

5. On the same page, in the third column, under § 137.77, in the first line, the (c) should be removed.

§ 199.27 [Corrected]

6. On page 39296, in the third column, under § 199.27, in the second line, insert quotation marks (") after the word "function".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-35; Amdt. 39-6411]

Airworthiness Directives; General Electric Company (GE) CF6-6 Series Turbofan Engines

Correction

In rule document 89-28933 beginning on page 51015 in the issue of Tuesday, December 12, 1989, make the following corrections:

§ 39.13 [Corrected]

1. On page 51016, in the third column, in § 39.13, under **General Electric Company:**, in the ninth line, "Step" should read "Stage".

2. On the same page, in the same column, in § 39.13, in the last line, "Table 3" should read "Table 1".

BILLING CODE 1505-01-D

federal register

Friday
December 22, 1989

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, and 1408

Debt Settlement Policies and Procedures; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, and 1408

RIN 0560-AA38

Debt Settlement Policies and Procedures

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published on June 19, 1989 at 54 FR 25718 with respect to the financial management practices of the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC). This final rule adopts, with minor changes, the provisions of the proposed rule. Accordingly, this final rule amends 7 CFR parts 709, 1403 and 1408 which relate to the administration of ASCS and CCC programs in order to set forth the policies and procedures of CCC regarding delinquent debts arising out of domestic transactions and the policies and procedures of CCC and ASCS regarding the assignment of payments. This rule sets forth the policies and procedures CCC will use to settle debts owed to CCC and other agencies of the United States. To the extent practicable, the final rule provides that CCC policies and procedures conform to the general guidelines set forth in the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*). To the extent practicable, CCC will also follow the provisions of the Federal Claims Collection Standards (4 CFR parts 101–105) with respect to administrative actions undertaken by CCC to settle claims. In addition, this final rule sets forth the manner in which CCC and ASCS payments may be assigned at 7 CFR part 1404 and deletes the current provisions at 7 CFR part 709.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Administration and Contract Procedures Branch, Fiscal Division, ASCS, (202) 447–4061.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under DR 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

The Federal Claims Collection Act of 1966 (the Act), as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR Parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

Currently, CCC follows procedures at 7 CFR part 13 for the offset or withholding of amounts approved by ASCS county committees for disbursement to agricultural producers. In all other cases, offset, withholdings, and stop payment policies at 7 CFR part 1408 are applicable. For procedures governing referrals of claims to the Department of Justice or the General Accounting Office the procedures in FCCS (4 CFR parts 101–105) may be followed. The regulations at 7 CFR part 1403 currently govern CCC policies regarding the assessment of late payment charges, referral of delinquent debts to credit reporting agencies, and referral of delinquent debts to IRS for tax refund offset.

This final rule deletes 7 CFR part 1408 which sets forth the setoff, withholding and stop payment policies of CCC and establishes under a single heading at 7 CFR part 1403, CCC policies and procedures governing the administrative collection, discharge, and referral of debts.

This regulation is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by various individuals, organizations, and corporations.

This rule protects the right of CCC and ASCS to collect delinquent debts when payments have been assigned by allowing offset of any debts owed to CCC or ASCS by an assignor before payment is made to an assignee in accordance with the provisions of agricultural programs administered by county and State ASCS committees. Currently, offset may only be made of those debts entered on the applicable debt record prior to the date an assignment was accepted by CCC or ASCS. This change in policy would deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations, as well as increase the ability of CCC and ASCS to recoup delinquent debts. This change would apply only to those debts owed to CCC and ASCS; the current procedures would continue to apply to requests for offset received from other federal agencies.

Under the final rule, the late payment interest rate CCC uses is a departure from the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate, as well as a change from the rate published in the proposed rule. Currently, the late payment interest rate is set by CCC in a notice published in the **Federal Register**. Such rate has been set at a fixed 13 percent and remained constant in spite of a dramatic fluctuation in interest rates in the past six years. The proposed rule provided that the late payment rate assessed on delinquent debts be based upon the rate CCC pays Treasury for

funds. It was proposed that late payment interest be assessed at a rate three percentage points higher than the CCC borrowing rate in effect on the date the debt became delinquent. In addition, for debts which remained delinquent for ninety (90) days, interest at an additional six percent would have been assessed.

Upon receipt of a comment on the proposed rule which asserted that the proposed late payment interest and additional interest rates were excessively high and would drive farmers deeper into debt, further review was made of CCC's proposed interest rates. Following this review it has been determined that CCC's late payment interest rate should be lowered to equal the rate of interest assessed under the Prompt Payment Act. Also, it was determined that for debts which remain delinquent for ninety (90) days, the additional interest assessed will be reduced from six percentage points to three percentage points above the late payment interest. With these changes, debtors will have an incentive to pay their debts timely without substantially increasing the amount of their debt. Furthermore, since the Prompt Payment Act rate has consistently been higher than CCC's borrowing rate, CCC will still be able to recover its borrowing costs. In addition, by charging debtors the same rate of interest on late payments as CCC pays if its payments are late, the problem of unequal treatment is eliminated.

This final rule also deletes 7 CFR part 709, which sets forth the manner in which ASCS and CCC payments may be assigned, and sets forth at 7 CFR part 1404 the criteria applicable to the assignment of ASCS and CCC program payments.

Three comments were received in response to the proposed rule published in the Federal Register on June 19, 1989 (54 FR 25718). One comment requested that the regulations include provisions to implement the requirement of the Agricultural Credit Act of 1987 that each loan program under the jurisdiction of the Secretary of Agriculture participate in state agricultural loan mediation programs. Since the requirement applies only to loan programs, provisions to implement it have been included in a proposed rule published in the Federal Register on August 22, 1989 (54 FR 34773) amending 7 CFR part 1405, rather than in the debt settlement policies and procedures. The regulations at 7 CFR part 1405 set forth general provisions applicable to CCC loans, purchases and other operations.

This commenter also felt that § 1403.6, which states that an accountant-certified financial statement may be required before an installment arrangement will be considered, could cause debtors to incur a large expense while attempting debt settlement. After examination of the requirement, it has been determined that CCC would be adequately protected by requiring a financial statement which is attested to as accurate by the preparer, under penalty of perjury, whether debtor-certified or accountant-certified. Therefore, the section has been amended to state only that a certified financial statement will be required.

The same commenter asserted that the proposed late payment interest and additional interest rates were excessively high and would drive farmers deeper into debt. As discussed previously, after further review it was determined that CCC would use a lower rate of applicable interest.

This commenter further requested a reconsideration of the provision of § 1404.3 which states that, "[n]othing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm * * *" This provision was derived from the statutory requirement of 16 U.S.C. 590h(g) that assignments may only be made to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice. Since assignments to secure payment of the purchase price of a farm or a fixed commodity rent are not included in the statute, they were specifically excluded from the regulations. However, since the section already provides that payments made in accordance with 7 CFR parts 701 and 1413 may only be assigned to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice for the current year, the further exclusion is unnecessary and has been deleted from these regulations.

This commenter also takes exception to the provision of § 1404.6 which provides that all debts due ASCS or CCC may be offset without regard to assignments which may have been filed, as well as § 1404.8 which states that USDA shall not be liable in any suit if payment is not made to the assignee. The provision of § 1404.6 was developed to increase the ability of CCC and ASCS to recoup delinquent debts and to deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations. Taking an assignment of a CCC or ASCS program payment as security for a debt has never been without risk. There has always been the possibility that a payment will not be made, e.g., if a producer fails to comply with contract requirements, as well as the possibility that an assignment will not be recognized because payment is made with commodity certificates which are not subject to assignment. Therefore, it was determined that any heightened risk to lenders is outweighed by the benefit to the government in the increased ability to collect delinquent debts. With respect to the second provision, the language in § 1404.8 was taken directly from 16 U.S.C. 590h(g) which authorizes the assignment of many ASCS and CCC program payments and thus is not subject to change.

Another comment requested that examples be provided of how, when and what interest rates would be applicable to delinquent debts. Under § 1403.9 late payment interest will accrue from the date of delinquency at the rate of interest applicable under the Prompt Payment Act, but, if payment is made within thirty days from the date of delinquency, collection of the late payment interest will be waived. An additional interest rate of three percent per annum will be assessed from the date of delinquency on any portion of the debt which remains unpaid ninety days after the date of delinquency. However, if a statute, regulation, agreement or contract specifies the interest applicable to the debt involved, these regulations shall not apply. As such possibilities are endless, it is not feasible to give examples of all of the variations which are possible. Accordingly, in order not to mislead affected parties, examples are not included in this final rule.

The third commenter submitted a copy of a complaint filed April 18, 1989, in the U.S. District Court for the District of Minnesota as their comments on the proposed regulations. Since the complaint was filed prior to publication of the proposed rule, it was not responsive to the contents of the regulations. Furthermore, since the complaint is being answered as part of the judicial process, it is not appropriate to respond to it here.

List of Subjects

7 CFR Part 709

Assignment of payment.

7 CFR Part 1403

Interest on delinquent debts.

7 CFR Part 1404

Assignment of payment.

7 CFR Part 1408

Setoff, Withholding and stop payment policies of Commodity Credit Corporation.

Accordingly, title 7 of the Code of Federal Regulations is amended as follows:

PART 709—[REMOVED]

1. 7 CFR part 709 is removed.
2. 7 CFR part 1403 is revised to read as follows:

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.

1403.1 Applicability.
1403.2 Administration.
1403.3 Definitions.
1403.4 Demand for payment of debts.
1403.5 Collection by payment in full.
1403.6 Collection by installment payments.
1403.7 Collection by administrative offset.
1403.8 Withholding.
1403.9 Late payment interest and administrative charges.
1403.10 Waiver of late payment interest and administrative charges.
1403.11 Administrative appeal.
1403.12 Additional administrative collection action.
1403.13 Contact with debtor's employing agency.
1403.14 Prior provision of rights with respect to debt.
1403.15 Discharge of debts.
1403.16 Referral of delinquent debts to credit reporting agencies.
1403.17 Referral of debts to Department of Justice.
1403.18 Referral of delinquent debts to IRS for tax refund offset.
1403.19 Reporting of discharged debts to IRS.
1403.20 Referral of debts to private collection agencies.

Authority: 15 U.S.C. 714b and 714c.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC arising out of domestic transactions.

§ 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Agricultural Stabilization and Conservation Service (ASCS).

§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

"Administrative charges" means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

"Administrative offset" means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

"ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (USDA).

"Carrier" means a company or person, including but not limited to railroads, motor carriers, ocean carriers or piggyback companies, providing transportation of USDA commodities or other transportation related service for compensation.

"Certified financial statement" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

"CCC" means the Commodity Credit Corporation.

"Claim" means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

"Credit reporting agency" means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

"Debt" means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

"Debt record" refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, ASCS, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

"Delinquent debt" means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date specified in an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

"Discharged debt" means any debt, or part thereof, which CCC has determined is uncollectible.

"IRS" means the Internal Revenue Service.

"Late payment interest rate" means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

"Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

"Salary offset" means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

"Settlement" means any final disposition of a debt or claim.

"Shipment" means a carload, truckload, containerload, or other conveyance load of freight shipped from one location in one calendar day by one shipper for delivery. It shall be moved in accordance with the terms of a commercial or ocean bill of lading, or other similar agreement between the carrier and USDA.

"System of records" means a group of any records under the control of CCC or ASCS from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

"Withholding" means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand shall be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by CCC that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent

demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC; and

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with Part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(e) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1–3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC–36 shall be subject to offset for any debt owed to CCC or ASCS without regard to the date notice of assignment was accepted by CCC or ASCS.

(3) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC–252 shall be offset:

(i) Against any debt of the assignor entered on the debt record of the applicable ASCS office prior to the filing of such form with CCC or ASCS, or

(ii) At anytime, regardless of the date of filing of such form with CCC or ASCS, if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of Levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by CCC or ASCS. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(5) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt record of the appropriate ASCS office prior to the date the notice of assignment was accepted by CCC or ASCS.

(6) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and ASCS debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or CCC determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or ASCS program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

§ 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due CCC or ASCS, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date of delinquency and applied on a daily basis to all amounts due on the debt including the principal balance of the debt plus regular interest, late payment interest and other charges. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection

services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to additional interest assessed in accordance with paragraph (e) of this section and administrative charges, second to assessed late payment interest, and third to outstanding principal.

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC shall waive the collection of additional interest on debts which are appealed in accordance with 7 CFR Part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, additional interest and administrative charges under this Part may be waived by CCC in full, or in part, if it is determined that such action is in the best interest of CCC.

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative remedy which may be available to CCC to collect debts owed to the Government.

§ 1403.13 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of Debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(s)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.

(2) The delinquent debt is owed by an individual who:

(i) Is declared legally insane or incompetent;

(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to debtors when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

§ 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§ 1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099–G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

3. The following new part 1404 is added to title 7 of the Code of Federal Regulations:

PART 1404—ASSIGNMENT OF PAYMENTS

Sec.

1404.1 General Statement.
1404.2 Definitions.
1404.3 Payments which may be assigned.
1404.4 Execution of assignment form.
1404.5 Payment assigned not to be discounted.
1404.6 Payment to the assignee.
1404.7 Misrepresentations.
1404.8 Liability of the Secretary or disbursing agents.
1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Agricultural Stabilization and Conservation Service (ASCS) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) *"Assignee"* means any person, including any agency of the Federal Government, to whom an assignment of an ASCS or CCC payment is made in accordance with this part.

(2) *"Assignor"* means any person who is the recipient of a payment from ASCS or CCC who assigns the payment to another person in accordance with this part.

(3) *"Payment"* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(ii) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1487, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

(a) Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by ASCS or CCC, any payment due a person from ASCS or CCC may be assigned.

(b)(1) A payment which is made to a producer in accordance with 7 CFR parts 701 and 1413 may not be assigned to pay or secure any preexisting indebtedness.

(2) Payments made in accordance with 7 CFR parts 701 and 1413 may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current

crop year. To finance making a crop means

(i) To finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or

(ii) To provide food, clothing, and other necessities required by the producer or persons dependent upon the producer.

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any ASCS or CCC payment must be made by the execution of Form CCC–36 or Forms CCC–251 and CCC–252. Form CCC–36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC–251 and 252 are applicable to all other CCC or ASCS programs and contracts.

(2)(i) To be recognized by ASCS or CCC, Form CCC–36 must be filed in the county ASCS office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by ASCS or CCC, Forms CCC–251 and 252 must be filed with the ASCS or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC–36 or Forms CCC–251 and 252 must be signed by both the assignor and the assignee. With respect to Form CCC–36, the assignor's signature must be witnessed by a member of the county ASC committee for the county where the farm is located, or by an employee of the county committee, unless the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, in which case the assignment may be witnessed by a bonded officer of such lending institution.

(3) The assignor and the assignee shall promptly notify the appropriate ASCS or CCC office of any change affecting the assignment.

§ 1404.5 Payment assigned not to be discounted.

(a) With respect to assignments made by execution of Form CCC–36, if interest is charged by the assignee on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located.

(b) The payment assigned shall not be discounted by charging the assignor more than the current cash price for any supplies furnished or in any other manner whatsoever. Interest may be deducted by the assignee in advance from any cash advancement.

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC–36 or CCC–251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, ASCS, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS without regard to the date of filing of a Form CCC–36 with the applicable ASCS or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS if such indebtedness was entered on the debt record of the applicable ASCS or CCC office prior to the date of the filing of Forms CCC–251 and 252 with the applicable ASCS or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or ASCS which was entered on the debt record of the applicable ASCS or CCC office prior to the date of filing of the Form CCC–36 or Forms CCC–251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and ASCS or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of Form CCC–36 or Forms CCC–251 and 252 with the appropriate ASCS or CCC office.

§ 1404.7 Misrepresentations.

If ASCS or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC–36, CCC–251 or CCC–252, ASCS or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, ASCS or CCC finds that any material misrepresentation was in fact made, ASCS or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns ASCS, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560–0004.

PART 1408—[REMOVED]

4. 7 CFR part 1408 is removed.

Signed at Washington, DC, on December 15, 1989.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

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Friday
December 22, 1989

Part III

Department of Energy

10 CFR Parts 500 et al.

Powerplant and Industrial Fuel Use Act of 1978; Issuance of Final Rules; Notice of Final Rulemaking

DEPARTMENT OF ENERGY

10 CFR Parts 500, 501, 503, 504, 508, and 516

Powerplant and Industrial Fuel Use Act of 1978; Issuance of Final Rules

AGENCY: Department of Energy.

ACTION: Notice of final rulemaking.

SUMMARY: The Office of Fossil Energy (OFE) of the Department of Energy (DOE) is revising its final rules implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). On January 25, 1989, the Economic Regulatory Administration (ERA) of the DOE published a notice of proposed rulemaking (54 FR 3726) in order to (1) incorporate legislative amendments of certain FUA sections into the regulations; (2) revise and clarify calculations as well as fuel price and inflation indices used in the cost test calculations supporting exemptions based on a lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; and (3) revise and update the oil/gas use estimates used in determining eligibility for exemptions based on cogeneration.

On January 6, 1989, the functions of the ERA with respect to the Fuel Use Act were transferred to the DOE's Assistant Secretary for Fossil Energy. OFE is issuing this final rule.

DATE: These rules shall become effective December 22, 1989.

FOR FURTHER INFORMATION CONTACT:

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Steven E. Ferguson (Office of General Counsel), Department of Energy, Room 6B–144, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6947.

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D. Paperwork Reduction Act of 1980

I. Background

On January 25, 1989, the Department of Energy's Economic Regulatory Administration issued a Notice of Proposed Rulemaking (NOPR) (54 FR 3726) to revise rules implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA) in order to address certain amendments to FUA made on May 21, 1987, by the Powerplant and Industrial Fuel Use Act of 1978, Amendments, Public Law 100–42. On January 6, 1989, the Department of Energy's FUA functions were transferred from ERA to the Office of Fossil Energy (OFE). OFE is issuing this final rule.

The amendments repealed certain sections of the Act and amended other sections. Repealed were section 202, New Major Fuel-Burning Installations; section 302, Existing Major Fuel-Burning Installations, section 401, Authority to Prohibit Use of Natural Gas in Certain Boilers Used for Space Heating; section 402, Prohibition on Use of Natural Gas for Decorative Outdoor Lighting; section 405, Authority to Restrict Increased Use of Petroleum by Existing Powerplants; title 5, System Compliance Options; and section 801, Coal Reserve Disclosure. Section 201 was amended by removing the prohibition against the use of oil or natural gas in new powerplants or industrial facilities, and creating a prohibition against construction or operation of new baseload electric powerplants without the capability to use coal or another alternate fuel as a primary energy source. In addition the Congress added a self-certification procedure for declaring new units to be capable of using alternate fuels.

The original statute was enacted following severe shortages of natural gas in the interstate market in the winter of 1976–1977. At the time, Congress sought to reduce oil imports and to conserve natural gas and oil for uses other than electric utility generation or commercial generation of steam. In order to achieve its purpose, FUA prohibited the use of oil and natural gas in both new major fuel burning installations (MFBI) and new electric powerplants unless an exemption for such use had been granted, and prohibited the construction of new MFBIs and powerplants without the capability of using an alternate fuel.

Domestic energy markets have fundamentally changed since the 1978 enactment of FUA. Phased decontrol of natural gas has resulted in substantial increased availability of natural gas in the interstate market. The use of natural gas has proved to be a cost effective way to expand electric generating capacity while meeting environmental requirements. The result has been a growth in inter-fuel competition and new markets for domestic oil and gas producers.

The amended FUA offered additional flexibility to utilities while preserving the "coal option" for new baseload electric powerplants by repealing of the categorical prohibition against the use of oil or gas contained in section 201 of the original statute, and substituting a requirement that new baseload powerplants be capable of using coal or another alternate fuel as a primary energy source. Utilities which do not wish to construct "alternate fuel capable" units may still petition for exemptions, as provided by the 1978 Act.

Advances in gas combustion turbine technology have made it possible for powerplant owners or operators to install an efficient simple cycle or combined cycle gas unit that could be altered at a later date if a decision were then made to add a gasifier to run the combustion turbine on clean, medium-Btu synthetic gas derived from coal. This type of powerplant is, for purposes of the amended Act, "alternate fuel capable;" that is, the unit itself could be altered at a later date by installing different tubing, nozzles, ducts, vanes, etc., so that it is capable of handling the larger volumes of medium-Btu coal gas.

These new high efficiency powerplants may be the technology of choice for future capacity additions. Such capacity can be added more rapidly and in smaller increments than direct coal-fired capacity, resulting in significant savings to consumers. Subsequently, if economic conditions warrant, a coal gasifier could be added to such plants, either on- or off-site, to produce clean synthetic coal gas that could be used in such combined-cycle powerplants. The May 21, 1987, amendment permits owners or operators of new powerplants to self-certify the alternate fuel capability of their powerplants. Since that time, self-certifications have been submitted for 113 new gas-fired electric powerplants resulting in an increased generating capacity of over 15,000 megawatts. No

requests for exemptions have been received since FUA was amended.

The purpose of the NOPR was threefold. First, the NOPR proposed to implement the May 1987 amendments to FUA. Consistent with the amendments, the NOPR proposed to remove industrial facilities and non-baseload electric powerplants from FUA coverage, leaving only baseload electric powerplants subject to the prohibitions of FUA. The NOPR also discussed the amendment's certification process by which baseload powerplants could comply with the alternate fuel capability requirements of the Act.

Second, the NOPR sought comment on proposed changes to calculations used for cost test exemptions as well as parameters and indices used in the fuel price computation methodology of appendix II to 10 CFR parts 503 and 504. Changes in energy markets and the convergence of the costs of low sulfur residual oil and natural gas caused the parameters and methodologies used in the previous FUA cost test regulations to become outdated. OFE found that current data indicate that a close pricing relationship has developed between imported petroleum and natural gas that did not exist when the initial criteria for the fuel price computations were adopted. For that reason, the OFE will now require an applicant to compare directly the cost of using coal in its planned facility with the cost of using its fuel of choice rather than comparing the cost of using coal with the price of using imported petroleum with a $1.00 added premium.

Third, the NOPR proposed to update the table in § 503.37 showing State-by-State estimates of oil and gas usage for determining the oil and gas savings when applying for a cogeneration exemption. When originally adopted on December 7, 1981 (46 FR 59872), this table contained data based upon 1980 regional oilgas use. The revised table is based on actual 1987 oil/gas and electricity statistics published by the DOE's Energy Information Administration (EIA) in its "Electric Power Annual 1987" [publication DOE/EIA-0348(87)].

Public comments received by OFE reflected an overwhelming endorsement of the foregoing proposals. Most commenters believed that the changes proposed were consistent with the intent of the FUA amendments. After considering the comments received, OFE is today adopting the foregoing proposals with changes discussed below. OFE believes that these final rules are fully responsive to the comments received.

II. Comments

A. General

Numerous non-substantive changes modifying the regulations to comport with the 1987 FUA amendments and DOE organizational changes were offered in the NOPR. Specific comments were not received from the public with regard to any of these proposed changes. Therefore, the OFE is adopting "housekeeping" changes that include removing all reference to terms that are no longer relevant including "new or existing major fuel burning installations," "installations," "MFBI," "process life," "refinery operations," and "alternate fuels determinations". In addition, references to "intermediate load" and "peakload" powerplants have been removed from the final regulations. Where appropriate, certain sections of the rules have been consolidated or combined to eliminate provisions or requirements that are repetitious or that experience has shown to be unnecessary, and reference to the Economic Regulatory Administration and ERA have been changed to Office of Fossil Energy and OFE.

B. Definitions (part 500)

Capability to use alternate fuel. An important change made by the 1987 FUA amendments was to redefine coal or alternate fuel capability. The definition adopted herein is taken verbatim from the FUA amendment. A powerplant now is considered to be alternate fuel capable if it has the inherent design characteristics to permit the *addition of equipment* (including pollution devices) to render the unit coal or alternate fuel capable, *and* if it is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. This "coal capability" is not to be interpreted to mean that the unit is capable of using coal or another alternate fuel on its initial day of operation.

For explanatory purposes, the following example was presented in the NOPR:

Example: A natural gas-fired, combined-cycle cogeneration facility is considered "coal capable" if the unit is physically, structurally, and technically capable of being modified at a future date to burn an alternate fuel, such as gasified coal.

One commenter proposed, and OFE adopted in its final regulations, an added explanatory sentence to the definition of "coal capability" which states that "(T)he owner or operator of a baseload powerplant need not have adequate space for either a coal gasifier or any facilities for handling coal or related fuels." The intent of this addition is to make it quite clear that the owner or operator of a proposed powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

C. Administrative Procedures and Sanctions (part 501)

1. General Provisions (subpart A)

The OFE has added a subparagraph (b) (Effective date of orders or rules) to § 501.9 of these final regulations that is extracted from the FUA amendment. The new paragraph provides that an exemption shall not take effect until all State regulatory approvals relating to the construction of the new facility have been obtained.

On a related issue, one commenter wrote that owners and operators of new baseload powerplants need regulatory certainty to obtain financing for self-certified baseload powerplants, and lenders may be unwilling to provide non-recourse financing for gas-fired, baseload electric generating facilities if there is a risk that certification can later be withdrawn. The commenter proposed that DOE add a regulatory provision specifying that self-certification filings are final and irrevocable at a time certain unless the DOE subsequently finds that the applicant knowingly made false or misleading statements in its certification, or unless, at some future date, the facility's inherent design characteristics are subsequently changed so that it becomes incapable of using alternate fuels.

DOE interprets the legislative intent of the certification procedure as offering the applicant certainty and protection while complying with the Act. A certification immediately triggers the applicant's compliance with FUA. The DOE retains the right to collect additional information from the applicant within 60 days of submission, but the certification is effective upon filing. Therefore, the DOE determined that inclusion of the commenter's suggested language was unnecessary.

A commenter proposed that the DOE retain the exclusion from FUA for "commercially unmarketable" energy sources. The commenter offered the example that if sufficient pipeline capacity is not constructed in time, additional volumes of liquefied natural gas (LNG) may someday be needed, at least temporarily, for power generation in New England. Such LNG might well be "commercially unmarketable", in the sense that it could be priced above the level that would prevail in a

marketplace where energy supplies are not artificially constrained.

OFE remains convinced that the amendments to the Act eliminated the need for an exclusion for commercially unmarketable fuels. The amended Act does not prohibit the use of any fuels in new baseload powerplants. In fact, the amendment encourages flexibility in fuel choices on the part of the owner or operator. The amendment requires that the unit have the inherent design characteristics to permit the addition of equipment necessary to render the unit alternate fuel capable, and that the unit not be physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. Once that requirement is met (or once an exemption from the requirement is obtained), the owner or operator may use any fuel desired in the unit, including a "commercially unmarketable" fuel. Therefore, the final rule removes the exclusion for "commercially unmarketable" fuels, as originally proposed.

The addresses set forth in § 501.11 for filing documents, and the location of the public reading room for reviewing or copying documents, have been changed since publication of the NOPR.

2. Exemptions and Certifications (subpart F)

The FUA amendments provide for a self-certification procedure to meet the alternate fuel capability requirement of the new section 201(a). § 501.61 of these rules adopts, without change, the original proposal that the following information be submitted in addition to the alternate fuel certification signed by a duly authorized representative of the company: (1) a description of the planned facility, including the size of the proposed unit(s) and process used (combined-cycle, simple-cycle, etc.) as well as the fuel(s) to be used; (2) identification of the owner/operator of the facility; and (3) the facility's location. For cogeneration facilities filing self-certifications, the certification is to include the name of the utility that will be purchasing the generated electricity.

D. Cogeneration Oil/Gas Savings (part 503)

The OFE has further refined the numbers presented in the NOPR for the table of estimated oil and gas savings that could be attributed to electricity backed off the grid by cogeneration, § 503.37. The previous table contained 1980 regional data that is no longer accurate. These final regulations use current State-by-State electricity offset rates that have been extracted from documents published by the DOE's Energy Information Administration. The DOE will update the data as necessary and publish notice of these updates in the Federal Register.

E. Cost Calculation and Fuel Price Computations (Appendix II to part 504)

FUA requires that a facility be granted an exemption to use oil or natural gas on the basis of cost when coal or another alternate fuel will not be available at a cost which, "based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum * * * *" [FUA, sections 211(a), 212(a), 311(a), 312(a), providing cost-based exemptions, and Section 103(a)(20), defining "cost"].

With respect to the fuel cost components of the cost calculations, the previous final regulations (46 FR 59872, November 30, 1981) provided equations and future fuel price indices for computing the prices of delivered fuels over the lifetime of a facility. However, those regulations contained only a crude oil price index and an alternate fuel index for coal. Since those regulations did not explicitly include natural gas or distillate oil use, when an applicant proposed to use natural gas or distillate oil, the fuel cost computation for the proposed fuel employed the cost of an equivalent energy use of No. 6 residual fuel oil plus a $1.00 premium. This was adopted originally to avoid biasing the cost comparison between gas and coal by employing an arbitrarily low natural gas price when binding wellhead price ceilings held natural gas prices below the energy-equivalent price of imported petroleum.

Since adoption of those regulations on December 7, 1981, domestic energy prices in general ceased rising and then declined under the impacts of declining world petroleum prices, increasing supplies, steady efficiency improvements in energy use, and deregulation of natural gas prices.

Market and regulatory changes have essentially eliminated the former disparity between the prices of oil and natural gas. As a result, earlier projections of future coal and oil prices used for cost comparisons in applications for exemptions are outdated and in need of revision.

Further, market forces also have essentially eradicated the earlier price gap that represented the undervaluation of natural gas relative to petroleum when natural gas prices were constrained by binding price ceilings at the wellhead. Therefore, OFE is now adopting its proposal that the price of the primary fuel to be used in the new facility, whether natural gas or petroleum, be used directly in the fuel cost computations.

1. Cost Calculation for Exemption Petitions Proposing the Use of Natural Gas

In response to three commenters, DOE is revising the previous paragraph (c) of Appendix II to part 504, Fuel Price Computation—Single Fuel. This calculation included a premium value of $1.00 per barrel of oil equivalent which was added to the price of the fuel to be burned in the new facility. There are two reasons why we adopt this proposal. First, addition of the $1.00 premium is inconsistent with the intent of the FUA amendments which encourage fuel consumers to base their fuel choices on economic and other factors rather than artificially imposed values. Second, as discussed in the NOPR, there is now demonstrated competition between natural gas and residual fuel oil allowing many facilities with dual-capability to switch back and forth between fuels based on very small changes in their relative prices. The capability for substitution between the fuels both in the short- and long-run will prevent unconstrained swings in the price of one fuel relative to the other.

The OFE is adopting its proposal that a petitioner requesting an exemption use the price of the fuel that will actually be used rather than an equivalent energy value of No. 6 residual fuel oil computing fuel price.

2. Fuel Price and Inflation Indices

Commenters generally supported the proposal contained in Appendix II Option 1 of the NOPR that provided a mechanism by which the parameters specified in paragraphs (b)(4) and (c)(4) and in Tables II–1 and II–2 of Appendix II are to be updated annually. These tables were originally used in the cost based exemptions of §§ 503.21 and 503.32 to express fuel prices and construction and operation costs in nominal dollars for the year the powerplant was to be placed in service. In previous regulations Table II–1 contained DOE's crude oil and alternative fuel price and inflation indices; Table II–2 contained rates of fuel price and inflation increases. These tables have now been combined and is now identified as Table II–1. This new table is now merely illustrative of the application of equations II–1 and II–2 that prescribe the method by which petitioners are to compute fuel and inflation indices.

Consistent with the NOPR, OFE is deleting Appendix II, Option 2.

Three commenters suggested that a petitioner, at his own discretion, should be allowed to develop fuel price indices using either the OFE methodology or his own. OFE is adopting this suggestion in Appendix II paragraph (b)(1). However, if the petitioner uses his own price index, the source or derivation of his index must be fully documented and be contained in the evidential summary.

Consistent with the NOPR, the OFE will use DOE's EIA base case, or mid-range, forecast as the basis for computing fuel price and inflation indices.

OFE is revising Appendix II to clarify that fuel price and inflation indices will change yearly with the publication of the EIA's Annual Energy Outlook (AEO). The relevant set of values for a specific petition will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

In a related matter, one commenter suggested that the DOE clarify its regulations to provide expressly that the cost comparison for permanent exemptions include the "full cost" of using each fuel considered in the comparison, including the cost of environmental compliance, as well as the cost of any loss in a powerplant's efficiency caused by such measures. The OFE believes that the current cost comparison regulations, specifically §§ 503.6(d) (2) and (3)(ii), do not preclude the accounting of environmental compliance costs or powerplant efficiency losses caused by environmental considerations.

III. Procedural Matters

A. Section 102 of the National Environmental Policy Act (NEPA)

The environmental impact of the Fuel Use Act was addressed in the programmatic Environmental Impact Statement (DOE/EIS-00381) published in April 1979. The previous final rulemaking was published on December 7, 1981 (46 FR 59872), after it was determined that those final regulations did not constitute a major federal action significantly affecting the human environment.

This final rule brings the language of the regulations into line with the amended FUA regarding the fuel price and inflation indices used in the cost calculations for an exemption, and change the fuel pricing formula for proposals to burn natural gas in a powerplant. Since this final rulemaking addresses the applicability of the FUA to only baseload powerplants and updates certain computational parameters and pricing formulae already evaluated in the programmatic EIS, the environmental impact of these regulatory changes fall within the scope of the previous EIS and its implementing rules. These amendments do not constitute a major federal action significantly affecting the quality of the human environment and neither an environmental assessment nor a supplement to the existing EIS is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 (September 19, 1980)) requires the DOE to describe the economic impact that a rule would have on small entities or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

Since these final rules reflect a reduction in the universe affected by the FUA and only change certain parameters already defined, the DOE has determined that this final rule will not negatively affect firms that are "small entities" within the meaning of the Regulatory Flexibility Act. Accordingly, the DOE certifies that this rule is not likely to have a significant impact on a substantial number of small entities within the meaning of that Act.

C. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires an agency to prepare a regulatory impact analysis for any proposed major rule. At the time the existing regulations were published, the Office of Management and Budget waived the requirements of sections 3, 4, and 7 of Executive Order 12291 as they pertain to those regulations. Since this final rule reduces the universe affected by FUA and would change only a small portion of the existing regulations, no regulatory impact analysis has been prepared.

Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Office of Management and Budget for review at least 10 days prior to publication in the **Federal Register.**

D. Paperwork Reduction Act of 1980

The information collection requirements contained in 10 CFR parts 500, 501, 503, and 504 of these regulations have received Office of Management and Budget (OMB) approval under control number 1901-0297.

List of Subjects in 10 CFR parts 501, 502, 503, and 504

Business and industry, Electric power plants, Energy conservation, Natural gas, Petroleum, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter II, title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on December 15, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

For reasons set out in the preamble, parts 500, 501, 503, 504, 508, and 516 of chapter II, title 10 of the Code of Federal Regulations are amended as follows.

PART 500—DEFINITIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 500.2 [Amended]

2. Section 500.2 is amended by removing "ERA", "Economic Regulatory Administration" and "Administrator" wherever those terms appear and replacing them with "OFE", "Office of Fossil Energy" and "Assistant Secretary" respectively.

3. By revising the definitions of "action" in § 500.2 to read as follows:

"Action" means a prohibition by rule or order, in accordance with sections 301(b) and (c) of FUA; any order granting or denying an exemption in accordance with sections 211, 212, 311 and 312 of FUA; a modification or rescission of any such order, or rule; an interpretation; a notice of violation; a remedial order; an interpretive ruling; or a rulemaking undertaken by DOE.

4. By revising the definition of "Capability to use alternate fuel" in § 500.2 to read as follows:

"Capability to use alternate fuel", for the purposes of Title II prohibitions relating to construction of new powerplants, means the powerplant to be constructed:

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation. In addition, the owner or operator of a baseload powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

5. By adding the definition of "Certification" in § 500.2 to read as follows:

"Certification" means a document, signed by an official of the owner or operator, notarized, and submitted to OFE, which declares that a new powerplant will have the "capability to use alternate fuel" (as defined herein).

6. By revising the definition of "cogeneration facility" in § 500.2 to read as follows:

"Cogeneration facility" means an electric powerplant that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

Note—Any cogeneration facility selling or exchanging less than fifty percent (50%) of the facility's generated electricity is considered an industrial cogenerator and is exempt from the fuel use prohibitions of FUA.

7. By revising the definition of "combined cycle unit" in § 500.2 to read as follows:

"Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine unit(s) provided by the exhaust gas from the combustion turbine unit(s).

Substantial amounts of supplemental firing for a steam turbine or waste heat boiler to improve thermal efficiency will not affect a unit's classification as a combined cycle unit.

8. By revising the definition of "Costs" in § 500.2 to read as follows:

"Costs" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant, discounted to the present, pursuant to rules established in Parts 503 and 504 of these regulations.

9. By revising the definition of "Design Capability" in § 500.2 to read as follows:

"Design capability" defined in section 103(a)(7) of FUA, shall be determined as follows:

(1) *Boiler and associated generator turbines.* The design fuel heat input rate of a steam-electric generating unit (Btu/hr) shall be the product of the generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall boiler-turbine-generator unit design efficiency (decimal); or if the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating, and the power factor nameplate rating; and 3412 (Btu/kWh), divided by the boiler turbine-generator unit's design efficiency (decimal). (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(2) *Combustion turbine and associated generator.* The design fuel heat input rate of a combustion turbine (Btu/hr) shall be the product of its nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the combustion turbine-generator unit's design efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) at the unit's elevation. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(3) *Combined cycle unit.* The design fuel heat input rate of a combined cycle unit (Btu/hr) shall be the summation of the product of its generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall combustion turbine-generator unit's efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's evaluation, plus the product of the maximum fuel heat input to any supplemental heat recovery steam generator/boiler in gallons or pounds per hour and the fuel's heat content. If the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilowatt-amperes nameplate rating and power factor nameplate rating must be substituted for kilowatts. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

10. By removing the definitions of "Existing major fuel burning installation", "Installation", "Major fuel burning installation", "New major fuel burning installation", and "MFBI" from 500.2.

11. By removing the definitions of "Intermediate load powerplant" and "Peakload powerplant" from 500.2.

12. By revising the definition of "Nonboiler" in 500.2 to read as follows:

"Nonboiler" means any powerplant which is not a boiler and consists of either a combustion turbine unit or combined cycle unit.

13. By revising the definition of "Primary energy source" in 500.2 to read as follows:

"Primary energy source" means the fuel or fuels used by any existing or new electric powerplant except:

(1) Minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses. OFE has determined that, unless need for a greater amount is demonstrated, twenty-five (25) percent of the total annual Btu heat input of a unit shall be automatically excluded under this paragraph.

(2) Minimum amounts of fuel required to alleviate or prevent:

(i) Unanticipated equipment outages as defined in § 501.191 of these regulations; and

(ii) Emergencies directly affecting the public health, safety, or welfare that would result from electric power outages as defined in § 501.191 of these regulations.

Note: (1) Any fuel excluded under the provisions of paragraph (1) of this definition is in addition to any fuel authorized to be used in any order granting a fuel mixtures exemption under Parts 503 and 504 of these rules. The exclusion of fuel under paragraph (1), together with the authority for such additive treatment, shall apply to any jurisdictional facility, regardless of whether or not it had received an order granting an exemption as of the date these rules are promulgated.

(2) If an auxiliary unit to an electric powerplant consumes fuel only for the auxiliary functions of unit ignition, startup, testing, flame stabilization, and other control uses, its use of minimum amounts of natural gas or petroleum is not prohibited by FUA. The measurement of such minimum amounts of fuel is discussed in *Associated Electric Cooperative*, et al., Interpretation 1980-42 [45 FR 82572, Dec. 15, 1980].

14. By revising the definition of "Prohibition Order" in § 500.2 to read as follows:

"Prohibition order" means:

(1) An order issued pursuant to Section 301(b) of the Act that prohibits a powerplant from burning natural gas or petroleum as its primary energy source; or

(2) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

15. By revising the definition of "Rated capacity" in § 500.2 to read as follows:

"Rated capacity" for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

16. By revising the definition of "Reconstruction" in § 500.2 to read as follows:

"Reconstruction" means the following:

(1) Except as provided in paragraph (2) of this definition, reconstruction shall be found to have taken place whenever the capital expenditures for refurbishment or modification of an electric powerplant on a cumulative basis for the current calendar year and preceding calendar year, are equal to or greater than fifty (50) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels.

(2) Notwithstanding paragraph (1) of this definition, reconstruction shall not be found to have taken place whenever:

(i) The capital expenditures for refurbishment or modification of an electric powerplant, on a cumulative basis for the current calendar year and preceding calendar year, are not greater than eighty (80) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces;

(ii) The unit being refurbished or modified was destroyed, in whole or substantial part, in a plant accident and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces; or

(iii) Refurbishment or modification of the unit is undertaken primarily for the purpose of increasing fuel burning efficiency of the unit, and will not result in:

(A) Increased remaining useful plant life, or

(B) Increased total annual fuel consumption.

17. By removing the definition of "Refinery operation" from § 500.2.

18. By revising the definition of "Site limitation" in § 500.2 to read as follows:

"Site limitation" means a specific physical limitation associated with a particular site that relates to the use of an alternate fuel as a primary energy scurce for the powerplant such as:

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land for facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Part 501 is amended as follows:

1. The authority citation for Part 501 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing the terms "ERA" and "Economic Regulatory Administration" where ever they appear with "OFE" and "Office of Fossil Energy" respectively.

3. By removing the reference "and MFBI's" in § 501.2(a).

4. By revising § 501.6 to read as follows:

§ 501.6 Service.

(a) DOE will serve all orders, notices interpretations or other documents that it is required to serve, personally or by mail, unless otherwise provided in these regulations.

(b) DOE will consider service upon a petitioner's duly authorized representative to be service upon the petitioner.

(c) Service by mail is effective upon mailing.

§ 501.7 [Amended]

5. By removing § 501.7(a)(12).

6. By redesignating § 501.7(a)(13) as § 501.7(a)(12).

7. By revising § 501.7(b) as follows:

* * * * *

(b) *Number of documents to be filed.* (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to DOE. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.

8. By revising the § 501.9 as follows:

§ 501.9 Effective date of orders or rules.

(a) When OFE issues a rule or order imposing a prohibition or granting an exemption (or permit) under FUA, the rule or order will be effective sixty (60) days after publication in the **Federal Register**, unless it is stayed, modified, suspended or rescinded.

(b) If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 201 of FUA against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

9. By revising § 501.10 to read as follows:

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this Part and any other provisions or parts of this chapter, except for general procedures which are unique to Part 515 of this chapter, the provisions of this part will control respect to procedure.

10. By revising § 501.11 to read as follows:

§ 501.11 Address for filing documents.

Send all petitions, self-certifications and written communications to the following address: Office of Fossil Energy, Office of Fuels Programs, Coal and Electricity Division, Mail Code FE–52, 1000 Independence Avenue, SW., Washington, DC 20585.

11. By revising § 501.12 to read as follows:

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, Room 1E190, 1000 Independence Avenue SW., Washington, DC for public inspection and copying any information required by statute and any information that OFE determines should be made available to the public.

12. By revising § 501.14 to read as follows:

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for

an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate Regional Administrator of the Environmental Protection Agency (EPA). The Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

13. By revising § 501.31(a) to read as follows:

§ 501.31 Written comments.

(a) *New facilities.* Except as may be provided elsewhere in these regulations, OFE shall provide a period of at least forty-five (45) days, commencing with publication of the Notice of Acceptance of Petition, of in the case of certification exemptions, Notice of Acceptance and availability of Certification, in the **Federal Register** in accordance with § 501.63(a), for submission of written comments concerning a petition for an exemption. Written comments shall be made in accordance with § 501.7.

* * * * *

14. By revising § 501.33(a) to read as follows:

§ 501.33 Request for a public hearing.

(a) *New facilities.* In the case of a petition for an exemption under Title II of FUA, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of OFE.

* * * * *

15. By revising § 501.35(b) to read as follows:

§ 501.35 Public file.

(a) * * *

(b) *Availability.* The public file shall be available for inspection at Room 1E190, 1000 Independence Avenue SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

16. Section 501.51 is amended by revising the section heading, paragraphs (a), (b) (2), and (3), (d) (2)(ii), and (3) to read as follows:

§ 501.51 Prohibitions by order—electing powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

* * * * *

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, OFE shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) OFE shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that OFE is required to make under section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at OFE's discretion.

* * * * *

(d) * * *

(2) * * *

(ii) Sufficient information for OFE to make the findings required by section 301(b) of FUA.

(3) If OFE determines to accept the request, OFE shall publish a proposed order in the **Federal Register** together with a statement of the reasons for the order.

§ 501.56 [Removed and reserved]

17. By removing and reserving § 501.56.

18. The heading for subpart F is revised to read as follows:

Subpart F—Exemptions and Certifications

19. By revising § 501.60(a) (1), (2), and (3) to read as follows:

§ 501.60 Purpose and scope.

(a) (1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant not in compliance with the prohibitions contained in section 201(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

* * * * *

20. By adding a new § 501.61 to read as follows:

§ 501.61 Certification Contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner's name and address.

(2) Operator's name and address.

(3) Plant location and address.

(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)

(5) Design capacity in megawatts (MW).

(6) Fuel(s) to be used by the new facility.

(7) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.

(8) Date unit is expected to be placed in service.

(9) Certification by an officer of the company or his designated representative certifying that the proposed facility:

(i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to § 501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) OFE will publish a notice in the **Federal Register** within fifteen days

reciting that the certification has been filed. Publication of this notice does not serve to commence a public comment period.

(d) OFE will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

21. By revising § 501.63(a)(2) to read as follows:

§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a) (1) * * *

(2) OFE will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to EPA, as provided in § 501.14(a).

* * * * *

22. By revising § 501.65 to read as follows:

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the **Federal Register** and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

23. By revising § 501.68(d) to read as follows:

§ 501.68 Decision and Order.

* * * * *

(d) OFE may design any terms and conditions included in any temporary exemption issued or extended under Section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

24. By revising § 501.103(c) to read as follows:

§ 501.103 OFE decision.

* * * * *

(c) OFE will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by OFE, upon the owner or operator of the affected powerplant. OFE will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the **Federal Register.**

25. By revising § 501.190 to read as follows:

§ 501.190 Purpose and scope.

(a) If a person operates a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, § 501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) *Explanatory note:* If a person operates a rental boiler as a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

26. By revising § 501.191(a) to read as follows:

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.

(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

* * * * *

§ 501.192 [Reserved]

27. By removing and reserving § 501.192.

Part 503 is amended as follows:

PART 503—NEW FACILITIES

1. The authority citation for part 503 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing "ERA" and "Economic Regulatory Administration" wherever they appear with "OFE" and "Office of Fossil Energy" respectively.

3. By revising the heading of Subpart A to read as follows:

Subpart A—General Prohibition

4. By revising § 503.1 to read as follows:

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibition imposed by the Act upon new powerplants. The prohibition in the subpart applies to all new baseload electric powerplants unless an exemption has been granted by OFE under subparts C and D of this part. Any person who owns, controls, rents, leases or operates a new powerplant that is subject to the prohibition may be subject to sanctions provided by the Act or these regulations.

5. By revising § 503.2 to read as follows:

§ 503.2 Prohibition.

Section 201 of the Act prohibits, unless an exemption has been granted under subpart C or D of this part, any new electric powerplant from being constructed or operated as a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source.

§ 503.3 [Removed and reserved]

6. By removing and reserving § 503.3.

7. By removing the footnote and revising the definition for "IX_i" in § 503.6(b)(4) and by removing the footnote in (d)(1) and removing the footnote and revising (d)(4) to read as follows:

§ 503.6 Cost calculations for new powerplants.

* * * * *

(b) * * *

(4) * * *

IX_i = Inflation index value for year i (see Appendix II to Part 504 for method of computation).

* * * * *

(d) * * *

(4) The discount rate (k) for analyses is 2.9 percent or that which is computed as specified in Appendix I. The method of computing the inflation index (IX) is shown in Appendix II to Part 504. OFE will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

* * * * *

8. By revising § 503.8(a) to read as follows:

§ 503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.

(a) *Application.* To qualify for an exemption, except in the case of an exemption for cogeneration units, section 213(c) of the Act requires a demonstration that, despite reasonable good faith efforts, there is no alternative supply of electric power available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. If a petitioner is unable to demonstrate that there is no alternate supply during the first year of operation, OFE will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result will not grant the exemption. Such action would not impair long-term reliability of service, since a petition may be submitted for a powerplant that would begin operation in a subsequent year.

* * * * *

9. By revising § 503.9(a) to read as follows:

§ 503.9 Use of mixtures—general requirement for certain permanent exemptions.

(a) *Criteria.* To qualify for a permanent exemption, except in the case of an exemption for fuel mixtures, section 213(a)(1) of the Act requires a demonstration that the use of a mixture of natural gas and petroleum and an alternate fuel for which an exemption under 10 CFR 503.38 (Fuel mixtures) would be available, would not be economically or technically feasible.

* * * * *

10. By revising § 503.10(a) to read as follows:

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) *OFE finding.* Except in the case of an exemption for fuel mixtures, OFE may deny permanent exemptions authorized under section 212 of the Act if OFE finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

* * * * *

11. By revising § 503.11(a) to read as follows:

§ 503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.

(a) *Criteria.* To qualify for a permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or inadequate capital, section 212(a) of the Act requires a demonstration that one of these exemptions would be available for any reasonable alternative site for the facility.

* * * * *

12. By revising § 503.13(a) introductory text, (a)(1), and (b) to read as follows:

§ 503.13 Environmental impact analysis.

* * * * *

(a) All petitions for permanent exemptions must contain the following information:

(1) A description of the facility, including site location, and surroundings, alternative site(s), the facility's current proposed operations, its fuel capability, and its pollution abatement systems and equipment (including those systems and equipment necessary for all fuel scenarios considered);

* * * * *

(b) For exemptions for cogeneration, the information enumerated below is to be submitted in lieu of the information required by paragraph (a) of this section. However, submission of the following information merely establishes a rebuttable presumption that the grant or denial of the exemption would have no significant environmental impact. OFE may, in individual cases, during the course of the administrative proceeding, determine that additional environmental information is required. In such cases, the petitioner will be required to submit the information described in paragraph (a) of this section.

* * * * *

13. By revising § 503.14 to read as follows:

§ 503.14 Fuels search.

Prior to submitting a petition for a permanent exemption for lack of alternate fuel supply, site limitations, inadequate capital, or state or local requirements, a petitioner must examine the use of conventional solid coal as a primary energy source at the site under consideration, and at reasonable alternative sites. Where a petitioner believes that its use of such coal would be infeasible, however, and where OFE and the petitioner can reach accord, it may evaluate use of a different alternate fuel in lieu of solid coal. A petitioner of these exemptions must demonstrate for any fuel examined that he would qualify for an exemption.

14. By revising § 503.20(b) to read as follows:

§ 503.20 Purpose and scope.

* * * * *

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

* * * * *

15. By revising § 503.21(a)(4) to read as follows:

§ 503.21 Lack of alternate fuel supply.

(a) * * *

(4) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.21 [Amended]

16. By removing § 503.21(c) and by redesignating § 503.21(d) as § 503.21(c).

17. By revising § 503.22(a)(3) to read as follows:

§ 503.22 Site limitation.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

18. By revising § 503.23(b)(8) and (d)(1)(ii) to read as follows:

§ 503.23 Inability to comply with applicable environmental requirements.

* * * * *

(b) * * *

(8) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

19. By revising § 503.24(a)(3) to read as follows:

§ 503.24 Future use of synthetic fuels.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

20. By revising § 503.25(a)(3) to read as follows:

§ 503.25 Public interest.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

21. By revising § 503.31(a) (3) and (5) to read as follows:

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations;

(4) * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

22. By revising § 503.32(a) (3) and (5) to read as follows:

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

23. By removing § 503.32(c).

24. By revising § 503.33(a) (2) and (4) to read as follows:

§ 503.33 Site limitations.

(a) * * *

(2) No alternate power supply exists, as required under § 503.8 of these regulations;

* * * * *

(4) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

25. By revising § 503.34 (a)(2), (c)(8), and (10), and (d)(1) (ii) and (iii) to read as follows:

§ 503.34 Inability to comply with applicable environmental requirements.

(a) * * *

(2) Reasonable alternative sites, which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements, are not available.

* * * * *

(c) * * *

(8) No alternate power supply exists as required under § 503.8 of these regulations;

* * * * *

(10) Alternative sites are not available, as required under § 503.11 of these regulations;

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

(iii) Alternative sites are not available, as required under § 503.11 of these regulations; and

* * * * *

26. By revising § 503.35(a)(2) introductory text, (3), and (5) to read as follows:

§ 503.35 Inability to obtain adequate capital.

(a) * * *

(2) The additional capital cannot be raised:

* * * * *

(3) No alternative power supply exists, as required under § 503.8 of these regulations;

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

27. By revising § 503.36(a) (4) through (6) and by adding (7) as follows:

§ 503.36 State or local requirements.

(a) * * *

(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;

(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;

(6) No alternate power supply exists, as required under § 503.8 of these regulations; and

(7) Use of mixtures is not feasible, as required under § 503.9 of these regulations.

* * * * *

28. By revising § 503.37 to read as follows:

§ 503.37 Cogeneration.

The following table may be used to determine eligibility for a permanent exemption based on oil and natural gas savings.

AVERAGE ANNUAL UTILIZATION OF OIL AND NATURAL GAS FOR ELECTRICITY GENERATION BY STATE

[BTU's per KWHR sold]

State name	Oil/gas savings Btu/kWh
Alabama	33
Arizona	802
Arkansas	1,363
California	3,502
Colorado	289
Connecticut	3,924
Delaware	3,478
Washington, DC.	895
Florida	3,177
Georgia	45
Idaho	0
Illinois	250
Indiana	53
Iowa	147
Kansas	686
Kentucky	34
Louisiana	4,189
Maine	2,560
Maryland	895
Massachusetts	5,250
Michigan	256
Minnesota	151
Mississippi	1,519
Missouri	57
Montana	60
Nebraska	139
Nevada	761
New Hampshire	2,695
New Jersey	1,894
New Mexico	1,528
New York	4,219
North Carolina	49
North Dakota	47
Ohio	36
Oklahoma	5,180
Oregon	0
Pennsylvania	771
Rhode Island	1,800
South Carolina	24
South Dakota	36
Tennessee	20
Texas	4,899
Utah	107
Vermont	105
Virginia	460
Washington	3
West Virginia	126
Wisconsin	72
Wyoming	75

Data are based upon 1987 oil, natural gas and electricity statistics published by DOE's Energy Information Administration.

Example: The proposed cogeneration project is to be located in Massachusetts and is to use distillate oil. It will have a capacity of 50 MW, an average annual heat rate of 7600 BTU/KWHR, and be operated at a capacity factor of 90%. The annual fuel consumption is therefore calculated to be $2{,}996 \times 10^9$ Btu/yr. (50,000 KW × 7600 BTU/KWHR × .9 × 8760 HR/YR) The oil and gas backed off the grid would be calculated to be $.2070 \times 10^9$ BTU/YR. (50,000 KW × 5250 BTU/KWHR × .9 × 8760 HR/YR) since the proposed unit would consume more oil that would be "backed off" the grid, the unit would not be eligible for a permanent exemption based on savings of oil and natural gas.

29. By revising § 503.38(a)(3) to read as follows:

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.39 [Amended]

30. By removing §§ 503.38 (b) and (d), and redesignating §§ 503.38 (c) and (e) as §§ 503.38 (b) and (c), respectively.

§§ 503.39-503.43 [Reserved]

31. By removing and reserving §§ 503.39 through 503.43.

Part 504 is amended as follows:

PART 504—EXISTING POWERPLANTS

1. The authority citation for part 504 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing "ERA" and "Economic Regulatory Administration" wherever they appear with "OFP" and "Office of Fuels Programs" respectively.

§ 504.1 [Removed and reserved]

3. By removing subpart A consisting of § 504.1.

Subpart B—[Amended]

4. By removing heading for subpart B.

5. Appendix II to part 504 is revised to read as follows:

Appendix II—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of the delivered fuels to be used in the cost calculations associated with parts 503 and 504 of these regulations. The delivered price of the fuel to be used to calculate delivered fuel expenses must reflect (1) the price of each fuel at the time of the petition, and (2) the effects of future real price increases for each fuel. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b), (c) and (d) below provide the procedure to: (1) Calculate fuel price and inflation indices; (2) account for projected real increases in fuel prices when planning to burn one or more than one fuel; and (3) account for projected real increases in the price of the alternate fuel. Table II-1 of this appendix (See paragraph (b)) contains example fuel price and inflation indices based on the latest data appearing in the Energy Information Administration's (EIA) *Annual Energy Outlook* (AEO).

The fuel price and inflation indices will change yearly with the publication of the *AEO*. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Computation of Fuel Price and Inflation Indices.*

(1) the Petitioner is responsible for computing the annual fuel price and inflation indices by using Equation II-1 and Equation II-2, respectively. The petitioner may compute the fuel price index specified in Equation II-1 or use his own price index. However, if he uses his own price index, the source or the derivation of the index must be fully documented and be contained in the evidential summary.

$$\text{EQ II-1 is: } PX_i = \frac{P_i}{P_o}$$

where:

PX_i = The fuel price index for each fuel in year i. P_i = Price of fuel in year i.

P_o = Price of fuel in base year.

$$\text{EQ II-2 is: } IX_i = \frac{GX_i}{GX_o}$$

where:

IX_i = The inflation index in year i.

GX_i = The NIPA GNP price deflator for year i.

GX_o = The NIPA GNP price deflator for the base year.

(2) The parameters to be used in EQ II-1 are the Base Case fuel price projections found in EIA's current *AEO*.

(3) When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in EIA's current *AEO*. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, in 1989 *AEO* projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the *AEO*'s projection for the remainder of the unit'(s) useful life.

(4) Table II-1 is provided as an example of the application of equations II-1 and II-2. This table contains annual fuel price indices for distillate oil, residual oil, natural gas, and coal. It also contains annual inflation indices. These values were computed from information contained in Table A3 and Table A11 of EIA's *AEO, 1989*.

TABLE II-1: PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1986	1.0000	1.0000	1.0000	1.0000	1.0000
1987	0.9810	1.2134	0.9508	0.9231	1.0334
1988	0.9429	0.9407	0.8934	0.8876	1.0658
1989	0.8929	0.9328	0.9057	0.8639	1.1054
1990	0.9905	1.0119	0.9221	0.9112	1.1607
1991	1.0381	1.0751	0.9344	0.9172	1.2204
1992	1.0929	1.1344	1.0205	0.9231	1.2836
1993	1.1595	1.2292	1.1148	0.9349	1.3512
1994	1.2286	1.3241	1.1844	0.9467	1.4214
1995	1.3000	1.4150	1.2705	0.9527	1.4960
1996	1.4000	1.5415	1.4016	0.9586	1.5763
1997	1.4762	1.6403	1.4918	0.9704	1.6585
1998	1.5452	1.7273	1.5615	0.9763	1.7410
1999	1.6143	1.7905	1.6475	0.9882	1.8235
2000	1.6690	1.8340	1.7049	0.9941	1.9025
2001	1.6690	1.8340	1.7049	0.9941	1.9025
2002	1.6690	1.8340	1.7049	0.9941	1.9025
2003	1.6690	1.8340	1.7049	0.9941	1.9025
2004	1.6690	1.8340	1.7049	0.9941	1.9025
2005	1.6690	1.8340	1.7049	0.9941	1.9025
2006	1.6690	1.8340	1.7049	0.9941	1.9025
2007	1.6690	1.8340	1.7049	0.9941	1.9025
2008	1.6690	1.8430	1.7049	0.9941	1.9025

TABLE II–1: PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS—Continued

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
2009	1.6690	1.8340	1.7049	0.9941	1.9025
2010	1.6690	1.8340	1.7049	0.9941	1.9025

(C) *Fuel Price Computation.*

(1) The delivered price of the proposed fuel to be burned (FPB_i) must reflect the real escalation rate of the proposed fuel, and must be computed with Equation EQ II–3.

EQ–II–3 is: $FPB_i = MPB\ [PX_i]$

where:

FPB_i = Price of the proposed fuel (distillate oil, residual oil, or natural gas) in year i.

MPB = The current delivered market price of the proposed fuel.

PX_i = The fuel price index value in year i, computed with Equation II–1.

or:

(2) When planning to use more than one fuel in the proposed unit(s), the petitioner must use Equation II–1 and Equation II–3 to calculate the annual fuel price of each fuel to be used. The petitioner then must estimate the proportion of each fuel to be burned annually over the useful life of the unit(s). With these proportions and the respective annual fuel prices for each fuel, the petitioner must compute an annual weighted average fuel price. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

(d) *Fuel Price Computation—Alternate Fuel.* The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II–4.

Equation II–4 is:

$PFA_i = APF \times apx_i$

where:

PFA = The price of the alternate fuel in year i.

APF^{-1} = The current market price of the alternate fuel f.o.b. the facility).

APX_i = The alternate fuel price index value for year i, computed with Equation II–1.

In most cases the alternate fuel will be coal. The petitioner must use Equation II–1 (paragraph (b)) to compute the escalation rate (APX_i). If an alternate fuel other than coal is proposed the source or the derivation of the index must be fully documented and be contained in the evidential summary.

PART 508—ELECTRIC UTILITY CONSERVATION [REMOVED]

Part 508 of chapter II, title 10 of the Code of Federal Regulations is removed.

PART 516—PROHIBITIONS ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING [REMOVED]

Part 516 of chapter II, title 10 of the Code of Federal Regulations is removed.

[FR Doc. 89–29700 Filed 12–21–89; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Flight Authorization for Noise Restricted Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26001; Special Federal Aviation Regulation (SFAR) No. 47-3]

Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the noise restrictions found in the general operating rules of the Federal Aviation Regulations (FAR). The current rule expires on December 31, 1989. This rule extends SFAR 47 through December 31, 1991, to allow non-complying Stage 1 aircraft to operate to or within the United States for the purpose of being hushkitted or scrapped to obtain spare parts for U.S. military aircraft.

DATES: Effective date of this amendment is January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurette Fisher, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-3561.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to part 91 of the Federal Aviation Regulations (FAR), on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under part 36. This restriction applies to U.S.-registered aircraft that have standard airworthiness certificates and foreign-registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 became effective January 1, 1985, (50 FR 7751, February 26, 1985) and permitted certain operations of noise-restricted aircraft without a formal grant of exemption under FAR part 11. The Federal Aviation Administration (FAA) has determined this process to be cost beneficial and time-efficient both to the government and the private sector. SFAR 47 has been extended twice since December 31, 1986 (51 FR 47219, December 31, 1986, and 52 FR 47672, December 15, 1987). The SFAR extensions limited operations to the hushkitting, scrapping, or exporting of Stage 1 aircraft.

This rule amends SFAR 47 to extend the regulation to December 31, 1991, to allow operators to hushkit their Stage 1 non-complying aircraft or scrap them under specific conditions. Exporting non-complying aircraft is no longer allowed.

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 98-511) and have been assigned OMB Control Number 2120-0518.

Review of Comments

This amendment is based on Notice of Proposed Rulemaking No. 89-22 published in the **Federal Register** on September 6, 1989 (54 FR 171).

Interested persons have been afforded the opportunity to participate in the development of all aspects of this rulemaking by submitting written comments to the public docket. The period for submitting comments closed September 25, 1989. All comments received have been reviewed and considered in the issuance of this final rule. The provision of SFAR 47 that allows operators to hushkit Stage 1 non-complying aircraft remains valid. The provision of SFAR 47 that allows operators to scrap non-complying aircraft will be retained with the requirement that these aircraft are being scrapped to obtain spare parts for the military, in support of the national defense. The provision of SFAR 47 for exporting aircraft will not be renewed. The reasons for adopting this modification are based on the following recommendations from the commenters.

Eight public comments were received concerning the granting of the special flight authorization for noise-restricted aircraft. All of the commenters supported the extension of SFAR 47 to December 31, 1991. Several commenters indicated a need to provide additional time to install Stage 2 or Stage 3 hushkits on non-complying Stage 1 aircraft. One commenter stated that it expected to continue hushkitting one or two aircraft per month through 1990, and possibly well into 1991.

One commenter stated that "the purpose of SFAR 47 was to simplify and, therefore, encourage noise reduction modifications. Foreign operators driven either by national mandate or a need to operate into countries where noise rules are more advanced, should continue to be provided the most simple means to achieve that end. Complication of the modification process by reliance on a formal grant of exemption could cause delays and therefore additional costs that would only frustrate foreign operators attempts to quiet their airplanes."

Information now available to the FAA through applications for Supplemental Type Certificates indicates that manufacturers are developing Stage 3 hushkits for non-complying Stage 1 aircraft. Airport operators and the public are demanding more Stage 3 aircraft operations at airports, as shown by the number of new orders for Stage 3 aircraft to replace existing Stage 2 aircraft. With the continuing demand for quieter aircraft, the SFAR extension allows operators to convert their non-complying aircraft from Stage 1 to Stage 2 or Stage 3 at their discretion. Therefore, the FAA will continue to allow non-complying aircraft to be brought to the United States for purposes of hushkitting Stage 1 aircraft to Stage 2 or Stage 3.

Four commenters requested that the FAA retain the provision in SFAR 47 which allows operations for scrapping non-complying aircraft for the purpose of supporting the United States Air Force KC-135 JT3D re-engining program. The KC-135 tanker fleet supports U.S. strategic national defense. When KC-135 assets and mission assignments are transferred from the Strategic Air Command to the Air National Guard and Air Force Reserve, the aircraft must be modified with JT3D engines from donor B-707 aircraft. Delays in deliveries of the donor B-707 aircraft to contractors for re-engining efforts could cause a lapse in strategic tanker support because of the non-supportable configuration of the current KC-135 engines. If the exemption for scrapping aircraft is eliminated, the costs of the next JT3D re-engining contract will increase significantly. Without this provision, the contractor would have to (1) request a special exemption for each flight under FAR Part 11 exemption procedures, increasing the administrative costs of both operators and the FAA; or (2) remove the engines outside the United States and ship them into the United States; or (3) "deliver" the airplanes to the Air Force outside the United States, necessitating an Air Force crew to be dispatched to fly the plane as a military aircraft to Davis Monthan Air Force Base, Arizona. In any case, the cost to the government would increase significantly and a

possible disruption to our strategic military program could occur. The FAA concurs with this position and will continue to allow the operation of these aircraft to be scrapped for the spare parts needed for U.S. national defense programs.

Only two commenters supported extension of those provisions in SFAR 47 which allow aircraft to be exported. These commenters did not submit any data to support continuing the exportation of non-complying aircraft. During the period of January 1, 1989, to July 20, 1989, the FAA received 32 requests for special flight authorizations and all were for hushkitting purposes only. There were no applications for exporting aircraft. In light of this, and because the commenters did not submit any data to support this provision, the FAA does not concur with continuing the provision for exportation of non-complying aircraft.

Economic/Regulatory Impact Evaluation

This rule will have negligible economic impact. The rule provides an alternative from the exemption process for certain operations, reducing the administrative costs of both operators and the FAA. While the operations are not without some noise impact, they will be insignificant, since the number of operations at any one airport will be limited.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared and placed in the public docket. The changes proposed in this rule do not significantly affect the quality of the human environment.

Federalism Implications

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

Conclusion

The rule has minimal economic consequences. Accordingly, for the reasons stated above, the FAA certifies that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) the amendment 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. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

The FAA has determined that public interest in the reduction of aircraft noise and the number of non-complying aircraft require that this rule be made effective in less than 30 days. This rule imposes no additional burden upon operators and provides an alternative from the exemption process which would be necessary if the rule terminated December 31, 1989. Accordingly, good cause exists under 5 U.S.C. 553(d) to make this rule effective in less than 30 days.

Lists of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Air traffic control, Airspace, Air transportation, Airworthiness directives and standards.

The Final Rule

Accordingly, the FAA amends part 91 of the Federal Aviation Regulations (14 CFR part 91) by amending Special Federal Aviation Regulation 47 as follows; effective January 1, 1990:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 State 1180); 42 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983.)

Special Federal Aviation Regulation 47—[Amended]

2. Paragraph 2(b) is removed.

3. Paragraph 2(c) is redesignated as 2(b) and is revised to read as follows:

SFAR No. 47

* * * * *

2. * * *

(b) Operations deemed necessary by the FAA for scrapping airplanes to obtain spare parts to support U.S. military programs for the national defense.

* * * * *

4. Paragraph 5 is amended by removing the year "1989" and substituting the year "1991" in its place.

Issued at Washington, DC on December 18, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-29779 Filed 12-19-89; 2:02 pm]

BILLING CODE 4910-13-M

federal register

Friday
December 22, 1989

Part V

Pension Benefit Guaranty Corporation

Single-Employer Plan Terminations; Notice

PENSION BENEFIT GUARANTY CORPORATION

Single-Employer Plan Terminations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Issuance of New Termination Forms.

SUMMARY: This notice advises pension practitioners that the Pension Benefit Guaranty Corporation is issuing new forms for standard and distress terminations that reflect the revised rules and procedures for voluntary plan terminations under the Single-Employer Pension Plan Amendments Act of 1986 and the Omnibus Budget Reconciliation Act of 1987. These new forms (Forms 500 and 501 for standard terminations and Forms 600 and 601 for distress terminations) replace the existing termination forms, IRS/PBGC Form 5310 and PBGC Forms 444 and 445, which pre-dated SEPPAA and OBRA '87. The PBGC is issuing these new forms in advance of the final standard and distress termination regulations in response to requests from the public that we do so. Issuance of these new forms will clarify and, in most cases, simplify the voluntary termination process.

EFFECTIVE DATE: The new forms must be used for single-employer plan terminations with respect to which notices of intent to terminate are issued on or after February 1, 1990. These forms may also be used for any termination initiated prior to that date.

FOR FURTHER INFORMATION CONTACT: Pension Benefit Guaranty Corporation, Coverage and Inquiries Branch, IOD, Code 25430, 2020 K Street NW., Washington, DC 20006; or call 202–778–8800 (202–778–8859 for TTY and TDD only.) (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On April 10, 1986, the PBGC issued (at 51 FR 12491) a "Notice of Interim Procedures" describing the new statutory rules and procedures for voluntary terminations of single-employers plans under the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"). That notice was supplemented by a second notice (53 FR 1904 (January 22, 1988)) advising the public of revisions to the statutory termination rules that were enacted pursuant to the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987.

The procedural requirements under SEPPAA for voluntary terminations were, to a significant degree, a codification of the PBGC's termination procedures established under its regulations. For this reason, the "Notice of Interim Procedures" advised plan administrators filing for standard terminations (which account for more than 99 percent of all voluntary terminations) to continue using the extant termination forms (IRS/PBGC Form 5310 and PBGC Forms 444 (enrolled actuary certification) and 445 (plan administrator certification) with certain modifications. (Several of these modifications necessitated handwritten changes on those forms.) For distress terminations, the notice generally provided that plan administrators should continue to use Form 5310, but that the required certifications could be submitted in any format. (Pre-SEPPAA, the PBGC did not require the enrolled actuary and plan administrator certifications—Forms 444 and 445—for insufficient plan terminations.)

The PBGC intended to issue new forms for voluntary plan terminations concurrently with issuance of its new termination regulations implementing both the SEPPAA and PPA amendments. Proposed regulations were published for public comment on September 2, 1987 (52 FR 33318). However, completion of the final regulations has been delayed for several reasons. In the meantime, the PBGC has received innumerable requests from pension practitioners to issue the new termination forms. The reasons usually suggested are that it is messy and time-consuming to make changes on printed forms, and that new forms would eliminate the need for plan administrators and actuaries to read both of the **Federal Register** notices, as well as the instructions to the old forms, in order to know how they must fill out the forms.

The PBGC believes that these points are well-taken; the issuance of the new plan termination forms would eliminate much confusion and simplify the termination process, particularly for standard terminations. Therefore, the PBGC is today announcing the issuance of four new plan termination forms: Form 500 (the Standard Termination Notice, including an enrolled actuary certification), Form 501 (the Post-Distribution Certification for Standard Terminations), Form 600 (the Distress Termination Notice of Intent to Terminate (to PBGC)), and Form 601 (the Distress Termination Notice, including an enrolled actuary certification). These forms will replace the Forms 5310 (for PBGC purposes only), 444, and 445 for all single-employer plan terminations with respect to which notices of intent to terminate are issued on or after February 1, 1990. It is emphasized that, with respect to these terminations, PBGC will reject any filings that use the old forms. With respect to those terminations initiated prior to February 1, 1990, for which all of the PBGC filings have not been made as of that date, the PBGC will permit and, indeed, encourages plan professionals to use the new forms.

Since the enactment of SEPPAA (and particularly since publication of the proposed regulations), the question most frequently asked PBGC concerns the time limits for completing the various steps of the termination process. With respect to several actions, the statute requires merely that they be undertaken or completed "as soon as practicable" (see sections 4041 (b)(2)(A), (b)(2)(D) and (c)(2)(A).) In its proposed regulations, PBGC suggested specific time limits in implementation of the "as soon as practicable" standard. While there was not much objection from the public to setting specific time limits, there were a number of comments objecting to those limits proposed by PBGC. PBGC agrees with much of this criticism and will revise the time limits in the final regulations accordingly.

Because the new termination forms were developed for use under the new termination regulations, the time limits for filing or issuing the various notices incident to a plan termination under the new regulations are set forth in the instructions to the forms. Until the final regulations are issued, and in response to the many questions from practitioners concerning PBGC's interpretation of "as soon as practicable", the PBGC hereby advises pension practitioners that the time limits stated in the instructions are to be considered guidelines for complying with the several statutory "as soon as practicable" requirements. In other words, these time limits reflect PBGC's determination of what constitutes reasonable time periods for completing the various steps in the termination process.

The PBGC has distributed copies of the new termination forms and instructions to the pension reporting services. We expect printing of the forms to be completed in early January 1990 and will begin mass distribution at that time. PBGC will mail copies of the forms and instructions to all pension practitioners, associations, etc., who have routinely received mailings of other PBGC issuances, as well as to all practitioners who receive bulk orders of the PBGC's Premium Payment Package. Other persons who are interested in receiving the forms and instructions should call (after January 7, 1990) the number or write to the address given above under the heading "For Further Information Contact". Persons who write in should please specify whether

they wish to receive the standard termination forms, the distress termination forms or both. (The PBGC will accept reproductions or other facsimiles of the forms.)

Finally, for any plan with respect to which a distress termination is contemplated, and it is expected that the notices of intent to terminate will be issued on or shortly after February 1, 1990, we recommend that the plan administrator contact PBGC to obtain copies of the forms. This will help ensure that the forms (specifically the Form 600) are received by the plan administrator early enough to be used without needing to defer issuance of the notices of intent to terminate.

Issued at Washington, DC, this 18th day of December 1989.

James B. Lockhart III,

Executive Director.

[FR Doc. 89-29745 Filed 12-21-89; 8:45 am]

BILLING CODE 7708-01-M

federal register

Friday
December 22, 1989

Part VI

Department of Health and Human Services

Public Health Service

Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for grants under the Adolescent Family Life (AFL) Demonstration Grants Program. These grants are for community-based and community-supported demonstration projects to find effective means of encouraging abstinence from adolescent premarital sexual activity, promoting adoption as an alternative to adolescent parenting, and establishing innovative, comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children. Funds are available for approximately 32 projects, which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, OPA, Room 736E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

DATE: To receive consideration grant applications must be received by the Grants Management Officer by March 30, 1990. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at 202–245–0146 or Program Office at 202–245–7473. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 13.995) Title XX authorizes grants for two types of demonstration projects: (1) projects which provide "care services" only (*i.e.*, services for the provision of care to pregnant adolescents, adolescent parents and their families); and (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent premarital sexual relations).

The Office of Adolescent Pregnancy Programs intends to make available approximately $4 million to support an estimated 32 AFL demonstration projects. Two categories of projects will be supported; (1) traditional demonstration projects with evaluation components as described and limited by the statute; and (2) evaluation-intensive projects specifically designed to produce research quality information bearing on the effectiveness of the demonstration intervention. An applicant may submit a proposal for a local care or local prevention project or for a national multi-site prevention project with at least two sites in different States. The average award for a local prevention project will be $80,000, with a range between $40,000 and $150,000, and between $100,000 and $250,000 for a national multi-site prevention project. The average award for a local care project will be $150,000, with a range between $50,000 and $200,000. In the case of evaluation-intensive proposals, awards may range up to 20 percent higher than the levels indicated above. The award levels for evaluation-intensive projects will include both intervention and evaluation funding, and evaluation activities may account for up to 30 percent of the total award.

Grants may be approved for project periods of up to 3 years. Grantees who receive 3 years of funding may then apply for an additional 2 years of funding through a competitive process.

Competing grant renewal applications will be accepted from current AFL grantees whose grants will end on September 30, 1990 and who will have received fewer than 5 years of funding.

Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of a grant is contingent upon the availability of funds, satisfactory progress of the project and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total cost of the project for each of the first and second years, and 60 percent for the third year. For those grantees who are then funded for an additional 2 years, the grant award may not exceed 50 percent for the fourth year and 40 percent for the fifth and final year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including plant, equipment and services.

The specific services which may be funded under title XX are listed below under "Care Programs" and "Prevention Programs."

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which demonstrate the capability of providing the proposed services and which meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only and not for multi-site national projects. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families. The Office encourages the submission of care applications which propose innovative ways of involving families, of promoting adoption as a postive option, and of stressing self-sufficiency skills such as school completion (in mainstream or alternative schools and GED programs) and/or job training and preparation that will assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life. Applicants should propose sound approaches to strengthening family commitment and addressing the underlying problems that lead adolescents into out-of-wedlock pregnancy as well as offering innovative approaches to presenting adoption as an option for pregnant adolescents. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination,

integration and linkages among such existing programs.

Applicants for care programs are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventative health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services;

(10) Counseling and referral for family planning services.

Note.— No funds provided under title XX may be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Within the context of providing the required core plus any supplemental services and developing evaluation strategies, applicants should pay particular attention to the following aspects of title XX:

* Provision of assistance to pregnant adolescents and adolescent parents to enable them to obtain proper care and to become productive contributors to family and community life.

* Continuation of services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally. This should extend about 2 years after delivery.

* Involvement of the families of pregnant adolescents and adolescent parents, including the father of the baby, and assisting families and adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.

* The promotion of adoption as an option for pregnant adolescents.

* Provision of support by family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with the complex issues surrounding adolescent pregnancy.

Prevention Programs

Under this announcement, funds are available for both local and multi-site national projects. A multi-site national project must have at least two sites in different States.

The purpose of prevention programs is to find effective means within the context of the family of reaching adolescents, both male and female, before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members in promoting abstinence from adolescent premarital sexual relations. OAPP is soliciting applications for grants to provide innovative approaches to family life educational services that clearly and unequivocally promote abstinence for unmarried adolescents. Applicants for prevention programs are not required to provide any specific number of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(6) Pregnancy testing and maternity counseling;

(7) Nutrition information and counseling; and

(8) Referral for screening and treatment of veneral disease.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). These information collections have been approved by OMB under control number 0937–0189.

Applications requesting support for prevention projects should propose innovative, value-based, family-centered approaches to promoting adolescent abstinence, affirming sexual relations in the context of marriage. Applicants should promote parents as the primary sex educators of their children and emphasize the provision of support by other family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations. Prevention applicants are encouraged to propose innovative, value-based approaches which will improve our understanding of effective strategies, as opposed to duplicating approaches which focus merely on improving knowledge, communication and assertiveness skills.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the funds received under Title XX on evaluation of the project. In some cases, waivers of the five percent limit on evaluation (see section 2006(b)(1)) may be granted.

As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding. All

project evaluations should monitor program processes to determine whether the program has been carried out as planned, and the program's outcomes. Outcome variables should be consistent with the key purposes of Title XX, including but not limited to family involvement, adoption and adolescent abstinence.

In addition to soliciting applications incorporating such traditional evaluation designs, the office also requests applications for *evaluation-intensive* projects. For applications funded under the evaluation-intensive category, the Office will waive the five percent limit up to a maximum of 30 percent. Applicants who wish to compete under this category must propose a project with a strong evaluation design which, in addition to focusing on outcome variables consistent with the key purposes of Title XX, particularly address questions pertaining to program impact, *i.e.*, is the program effective, for whom is it effective and under what conditions is it effective? The evaluation design may measure any of the following: (1) What effect variations in service delivery have on client outcomes; (2) how service delivery and corresponding client outcomes are influenced by variations in client population characteristics; or (3) the extent to which particular institutional settings, linkages with other provider agencies or other organizational characteristics affect the capacity of a project to provide the services in an effective manner. Emphasis must be placed on measuring variables which are integral to the project's proposed intervention and which are central to the purposes of the AFL program. Proposals must show serious attention to problems of data collection and verification, must demonstrate sample size sufficiency (emphasizing techniques for controlling for attrition) and must utilize a strong research design, using randomized control or matched-comparison groups for measurement where possible. Applications for evaluation-intensive awards will be reviewed with like applications.

Section 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. Particularly in the case of evaluation-intensive proposals, the OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the research hypothesis(es), identification of the variables to be measured and timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. Failure to integrate the intervention and evaluation components to the satisfaction of reviewers will result in rejection of the proposal.

Application Requirements

Applications must be submitted on the forms supplied and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Under section 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral and may not advocate, promote or encourage abortion. Only if both the adolescent and her parents request abortion counseling may a project provide referral for abortion counseling to a pregnant adolescent.

Additional Requirements

Applicants for grants must also meet the following requirements:

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Review Under Executive Order 12372.* Applications under this announcement are subject to the review requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) as implemented by 45 CFR part 100 (Intergovernmental Review of DHHS Programs and Activities) which established a process for consulting with State and local elected officials on proposed Federal financial assistance.

The application kit contains information to guide applicants in fulfilling the above requirements.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide the rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (15 points)

(2) The applicant's presentation of an appropriate project methodology, including a clear statement of goals and objectives consistent with Title XX, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (20 points)

(3) The applicant's provision for complying with the legislation's requirements to involve families in the delivery of services; in the case of care programs to promote adoption as a positive alternative; and in the case of prevention programs to clearly and unequivocally promote abstinence from adolescent premarital sexual activity, affirming sexuality in the context of marriage. (20 points)

(4) The applicant's documentation of the innovativeness of the program approach and its worth for testing and replication. (15 points)

(5) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Note.—Applications will be reviewed in two separate categories according to whether they are standard demonstration proposals with limited evaluations or evaluation-intensive proposals.

(6) The applicant's provision for the requirements set forth in Section 2006(a) of Title XX of the Public Health Service Act. (10 points)

In making grant award decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the

country, the priorities in section 2005(a) and the factors in section 2005(b) of Title XX of the Public Health Service Act and other factors, focusing on:

(1) The nature of the organization applying;

(2) The applicant's capacity to administer funds responsibly;

(3) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(4) The population to be served;

(5) The community commitment to and involvement in planning and implementation of the demonstration project;

(6) The organizational model(s) for delivery of service;

(7) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing AFL demonstration models;

(8) The applicant's proposed plans to access continued community funding as Federal funds decrease and end; and

(9) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: November 16, 1989.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 89-29778 Filed 12-22-89; 8:45 am]

BILLING CODE 4160-17-M

federal register

Thursday
December 22, 1989

Part VII

Federal Financial Institutions Examination Council

Uniform Interagency Community Reinvestment Act Guidelines for Disclosure of Written Evaluations and Revisions to Assessment Rating System; Notice

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Interagency Community Reinvestment Act Guidelines for Disclosure of Written Evaluations and Revisions to Assessment Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of request for comments.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is proposing certain changes to the current format of the Community Reinvestment Act (CRA) rating system. These changes are in response to the recent amendments to the CRA occasioned by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The FIRREA amendments to the CRA may be summarized as: (1) Requiring disclosure to the public of an institution's CRA rating; (2) requiring that the Federal regulatory agencies provide a written evaluation of an institution's CRA performance utilizing a four-tiered descriptive rating system, in lieu of the existing five-tiered numercial rating system.

This notice represents an effort, via the FFIEC, by the Federal depository institutions regulatory agencies to develop uniform procedures for both the disclosure of CRA rating information and standardization of written evaluation reports using the existing assessment factors developed for judging CRA performance. This request for comments is intended to provide the public with an early opportunity to comment on the interagency proposal.

The FFIEC will consider the comments received in developing final guidelines that will be issued by each of the regulators. Further, these comments will provide useful input prior to the initiation of rulemakings to modify existing regulations governing financial institutions' CRA compliance.

DATE: Comments must be received on or before January 29, 1990.

ADDRESS: All comments should be sent to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., Suite 701, Washington, DC 20006 or delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m on business days.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board: Glenn E. Loney, Assistant Director, Consumer and Community Affairs (202) 452–3585.

Federal Deposit Insurance Corporation: Janice M. Smith, Director, Office of Consumer Affairs (202) 898–3536.

Office of the Comptroller of the Currency: John H. McDowell, Director, Consumer Activities Division (202) 287–4265.

Office of Thrift Supervision: Jerauld C. Kluckman, Director, Division of Compliance Programs (202) 785–5442.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101–73, 103 Stat. 183 (1989), amended the Community Reinvestment Act of 1977 (CRA), Title VIII, Public Law No. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*). The new section 807, added by FIRREA, promotes the enforcement of CRA by affording the public an opportunity to learn of an institution's rating, while at the same time making available the findings and conclusions used by the applicable Federal depository institution regulator in reaching its specified rating.

The manner in which the disclosure and written evaluation requirements of section 807 are to be implemented is the subject of the following FFIEC proposal. The FFIEC Consumer Compliance Task Force has thoroughly discussed and reviewed the CRA Subcommittee's proposals to comply with the provisions of FIRREA and has recommended them for adoption by the Council. The proposal discusses the implementation of the disclosure provisions, and provides a detailed breakdown of the revised method of evaluating the existing assessment factors to provide written evaluations as mandated by the amendment.

Request for comments

This notice of request for comments is intended to provide an opportunity to comment on the procedure for disclosure of written evaluations and the revisions of the assessment rating system. The FFIEC and the financial regulators will use the comments received to develop final guidelines. The financial regulators will issue the final guidelines to the institutions they supervise. Further, the financial regulators will use the comments in developing proposals to modify their existing regulations governing CRA activities. The FFIEC requests comments regarding any aspect of the attached proposal.

Dated: December 18, 1989.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

Uniform Interagency Community Reinvestment Act Guidelines for Disclosure of Written Evaluations and Revisions to Assessment Rating System

Disclosure of Written Evaluations

The new section 807 of the Community Reinvestment Act (CRA) requires that the appropriate Federal depository institution regulatory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. Section 807, in addition, requires that these written evaluations have a public and confidential section.

The following proposed procedures detail the manner in which financial institutions will be required to disclose the public portions of their CRA written evaluations.

Recommended Method of Disclosure

Disclosure by the Financial Institution

Under this approach:

- The CRA evaluation will be:

—Prepared by the institution's supervisory agency upon completion of CRA examinations commencing on and after July 1, 1990;

—Transmitted to the institution at the same time the agency sends the written CRA examination report; a separate document, distinct from the examination report, thereby maintaining the confidentiality of the exam report.

- The institution will make its most current evaluation available to the public within 30 days of its receipt.

An evaluation will be considered "current" until 30 days following the date of receipt of a new evaluation from the institution's supervisory agency.

- The evaluation, at a minimum, will be placed in the institution's CRA public file located at the main office.

- The availability of an institution's evaluation will be set forth in the institution's required CRA public notice, posted in each depository facility, by adding language such as:

> You may obtain our current CRA Performance Evaluation, which was prepared by (*name of agency*), at (*address*).

- Each institution will be required to add this language to its CRA notice and complete the posting of such revised notices in all offices, within 30 days of receipt of the first evaluation.

• The institution will be required to provide a copy of its current evaluation to any person, upon request, and will be authorized to charge a fee not to exceed the cost of reproduction.

• The format and content of the institution's evaluation, as prepared and transmitted to the institution by its supervisory agency, will not be altered in any manner.

• The institution will be encouraged to include its response to the evaluation in its CRA public file.

Rationale and Benefits

This approach will provide convenient access by the public to each institution's evaluation. It will:

• Ensure public access to the evaluation in communities served by the institution.

• Be consistent with other requirements already imposed on financial institutions by current CRA regulations (*e.g.*, maintenance of CRA statements and public file; posting of CRA notice).

• Facilitate comparisons by the public of the CRA statement prepared by the institution with the evaluation prepared by the supervisory agency. Indirectly, it could encourage development of well documented, expanded CRA statements by each institution, as recommended by the *Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act. See* 54 FR 13742 (April 5, 1989).

• Help encourage greater attention by the institution's board of directors, management and employees to the institution's CRA performance in all community areas served by local depository offices.

Format and Content of Required Written Evaluation

In addressing the format and content of disclosures, the FFIEC believes two considerations should be emphasized. First, the Agencies should try to achieve consistency in preparing the evaluations. Consistency will facilitate public understanding of evaluations and promote a common understanding of CRA. A common understanding shared by community groups, regulators, and depository institutions regarding CRA will result in reasonable expectations and constructive dialogue with respect to CRA issues.

Second, the language used in preparing the CRA evaluations should be simple and concise. Evaluations should be written in a manner understandable to the public. The use of acronyms, technical banking or regulatory terminology, and unexplained banking concepts is discouraged.

Uniform Format

Because of the need for confidential treatment of the examination report, the CRA evaluation will be prepared as a stand-alone document that may be extracted from the CRA examination report, eliminating information precluded by statute or deemed by the agencies to be confidential.

Content of Evaluation

To facilitate understanding of CRA, it is desirable to preface the evaluation with background information outlining the general purposes of the CRA and explaining the evaluation.

The FFIEC also recommends that the agencies do not include in the evaluation the institution's response to CRA examination findings because the response is considered part of the supervisory function. Evaluations should be based only on the examiners' findings. The regulatory agencies will encourage financial institutions to include their response to the evaluation in their CRA public file.

Evaluation Format

To ensure maximum consistency, the regulators will use a standard format. The evaluation will consist of four distinct sections:

Section I—Cover Page and General Information Page
Section II—Rating Information—Summary of CRA Ratings and the Institution's Specific Rating
Section III—Narrative Discussing Performance Under the Assessment Factors and Supporting Facts
Section IV—Additional Information

Section I—Cover Page and General Information

The cover page will include:

1. The date of the evaluation.

2. The name and address of the institution.

3. The name and address of the supervisory agency.

A standard "General Information" page will address the purpose of both the CRA and the public written evaluation. It will also provide a statement on the basis for the rating.

Section II—Rating Information

This page will contain:

• The four ratings specified in section 807 of the CRA. A brief description of each of the ratings will precede the presentation of the particular institution's rating and will provide a standard for comparison. For example, presentation of a "Needs to Improve" rating will clearly be identified as not being the worst possible rating.

• The rating for the institution resulting from the examination.

Section III—Assessment Factors and Supporting Facts

The performance categories will be listed in order. For each category, the relevant assessment factors, as written in the regulation, will be spelled out followed by a narrative supporting the conclusion under each factor.

Section IV—Additional Information

This section may include any other relevant information that does not appropriately fit in other sections, such as the Metropolitan Statistical Area (MSA) in which the institution is located, the location of branches, and the location of the appropriate HMDA depository.

Appendix A

A sample evaluation is presented below.

Appendix A

Sample Evaluation

Public Disclosure

[Date of Evaluation]
Community Reinvestment Act
Performance Evaluation
Name of Depository Institution
Address
Name of Supervisory Agency
Address

General Information

This document is an evaluation of the Community Reinvestment Act (CRA) performance of [*Name of depository institution*] prepared by [*Name of agency*], the institution's supervisory agency.

The evaluation represents the agency's current assessment and rating of the institution's CRA performance based on an examination completed as of (*the date on the cover*). It does not reflect any CRA-related activities that may have been initiated or discontinued by the institution after that date.

The purpose of the Community Reinvestment Act of 1977 (12 U.S.C. 2901), as amended, is to encourage each financial institution to help meet the credit needs of the communities in which it operates. The Act requires that in connection with its examination of a financial institution, each federal financial supervisory agency shall (1) assess the institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations of the institution, and (2) take that record of performance into account when deciding whether to approve an application of the institution for a deposit facility.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101–73, amended the CRA to require

the Agencies to make public certain portions of their CRA performance assessments of financial institutions.

Basis for the Rating

The assessment of the institution's record takes into account its financial capacity and size, legal impediments and local economic conditions and demographics, including the competitive environment in which it operates. Assessing the CRA performance is a process that does not rely on absolute standards. Institutions are not required to adopt specific activities, nor to offer specific types or amounts of credit. Each institution has considerable flexibility in determining how it can best help to meet the credit needs of its entire community. In that light, evaluations are based on a review of 12 assessment factors, which are grouped together under 5 performance categories, as detailed in the following section of this evaluation.

Caution: This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

Assignment of Rating

Identification of Possible Ratings.

In connection with the assessment of each insured depository institution's CRA performance, a rating is assigned from the following groups:

Outstanding record of meeting community credit needs.

An institution in this group has an outstanding record of, and is a leader in, ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Satisfactory record of meeting community credit needs.

An institution in this group has a satisfactory record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Needs to improve record of meeting community credit needs.

An institution in this group needs to improve its overall record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Substantial noncompliance in meeting community credit needs.

An institution in this group has a substantially deficient record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Institution's Rating:

[Insert Applicable Rating]

Discussion of Institution's Performance

I. Ascertainment of Community Credit Needs

Reasonableness of Delineated Community (Conclusion/Support):

Assessment Factor—Activities conducted by the institution to ascertain the credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution.

(Conclusion/Support):

Assessment Factor—The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act.

(Conclusion/Support):

II. Marketing and Types of Credit Extended

Assessment Factor—The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the institution.

(Conclusion/Support):

Assessment Factor—The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase or such loans originated in its community.

(Conclusion/Support):

Assessment Factor—The institution's participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses, or small farms.

(Conclusion/Support):

III. Geographic Distribution and Record of Opening and Closing Offices

Assessment Factor—The geographic distribution of the institution's credit extensions, credit applications, and credit denials.

(Conclusion/Support):

Assessment Factor—The institution's record of opening and closing offices and providing services at offices.

(Conclusion/Support):

IV. Discrimination and Other Illegal Credit Practices

Assessment Factor—Any practices intended to discourage applications for types of credit set forth in the institution's CRA Statement(s).

(Conclusion/Support):

Assessment Factor—Evidence of prohibited discriminatory or other illegal credit practices.

(Conclusion/Support):

V. Community Development

Assessment Factor—The institution's participation, including investments, in local community development and redevelopment projects or programs.

(Conclusion/Support):

Assessment Factor—The institution's ability to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions and other factors.

(Conclusion/Support):

Assessment Factor—Any other factors that, in the regulatory authority's judgment, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(Conclusion/Support):

Proposed Revisions to the Uniform Interagency Community Reinvestment Act Assessment Rating System

Introduction

The revised CRA Rating System provides a comprehensive and uniform method for evaluating the CRA performance of federally regulated financial institutions. It ranks the overall performance of financial institutions in helping to meet community credit needs, including those of low- and moderate-income neighborhoods, using a four-tiered descriptive rating system.

These ratings are:

1. "Outstanding record of meeting community credit needs."
2. "Satisfactory record of meeting community credit needs."
3. "Needs to improve record of meeting community credit needs."
4. "Substantial noncompliance in meeting community credit needs."

The overall performance of an institution is based on its performance in helping to meet various community credit needs. The assessment process uses five "performance categories" which represent a grouping of the twelve assessment factors contained in the regulations which implement the Act.

The assessment of an institution's record in helping to meet community credit needs takes into account a number of factors—the financial capacity and size of the institution, legal impediments, local and regional economic conditions and demographics, and the competitive environment in which the institution operates. All of these factors have a significant bearing on how the institution fulfills its obligation to help meet the credit needs of its community.

A variety of unique, complex factors are reviewed and assessed by examiners to reach conclusions and appropriate recommendations regarding an institution's record of CRA performance. The performance of the institution is primarily related to the financial and managerial capability of the institution to meet the credit needs of the community.

Because of the various factors considered in the assessment of an institution's record of CRA performance, it should be remembered that the guidelines provided are generally descriptive and that all attributes do not apply to *every* institution. Examiners are expected to use their judgment in determining the rating that best describes the institution's performance under CRA.

To maintain a balanced perspective, examiners must carefully consider information provided by both the institution and the community. Assessing the CRA performance of an institution is a process that does not rely on absolute standards. However, compliance with antidiscrimination laws and regulations, including fair lending and fair housing laws, has great significance in reaching the overall conclusion.

In applying the CRA Rating System, consideration is given to the guidance provided by the *Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act.* (Joint Statement) *See* 54 FR 13742 (April 5, 1989). The Joint Statement identifies the various types of policies, procedures and programs the agencies believe constitute a financial institution's sound approach to fulfilling their CRA responsibilities.

Pursuant to the Joint Statement, an effective CRA process should include methods to ascertain community credit needs on an ongoing basis through outreach efforts and methods to incorporate those findings into the development of products and services the institution decides to offer to meet identified credit needs. The CRA plan should include marketing and advertising programs for lending products and services that inform and stimulate awareness throughout all segments of the community. The duty to coordinate and monitor the CRA process should be assigned to a senior officer or committee charged with the responsibility to report periodically to the institution's board of directors about CRA efforts, performance, and areas for improvement, where appropriate. An employee training program should be established which addresses policies and procedures of the institution designed to comply with antidiscrimination laws and regulations and help meet community credit needs.

The federal financial regulatory agencies also expect financial institutions to maintain reasonable documentation of the activities conducted to implement the institution's CRA policies, procedures and programs. Finally, the regulators believe it would be especially useful for a financial institution to expand its CRA statement to include a description of the activities the institution has undertaken to meet its responsibilities under CRA. This expansion would enhance the prospects for an informed dialogue about CRA-related issues between the institution and members of the public.

Written Evaluations

The following CRA rating profiles have been developed to assist the regulatory agencies in providing meaningful written evaluations on an institution's CRA performance. By providing a thorough description of what is required for each rating category and assessment factor, the rationale for an institution's ultimate CRA rating may be more readily understood.

CRA Rating Profiles

Outstanding Record of Meeting Community Credit Needs

An institution in this group has an outstanding record of, and is a leader in, ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods. CRA is an integral component of the institution's planning process and is explicitly reflected in its formal policies, procedures, and training programs. Documentation of CRA-related activities is comprehensive and readily available. The institution employs affirmative outreach efforts to determine community credit needs and addresses them through innovative product development. The board of directors and senior management are highly involved in planning for, implementing, and monitoring their CRA-related performance. The institution is highly involved with a broad spectrum of community organizations and the public sector. The institution aggressively markets special credit services and has, as a result, extended loans which significantly benefit the community. Internal monitoring procedures assure and demonstrate appropriate volume and distribution of credit extensions, applications, and denials to all segments of its delineated community. The institution is in compliance with antidiscrimination laws and regulations, including fair lending and fair housing laws. The institution has played a leadership role in promoting economic revitalization and growth and/or has engaged in other activities to help meet community credit needs. Such institutions have demonstrated the ability to monitor and assess their own performances, and they present no supervisory concern in CRA matters.

Satisfactory Record of Meeting Community Credit Needs

An institution in this group has a satisfactory record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community reasonably meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods. CRA is considered, but is not an integral component of the institution's planning process. However, CRA objectives have been integrated into the institution's policies, procedures and programs. Employee training for CRA is adequate, but may need to be expanded. Documentation and monitoring of the institution's CRA-related activities is adequate. The institution determines its community credit needs and normally addresses them through appropriate loan product development. The board of directors and senior management have occasional involvement in the institution's CRA planning, implementation and monitoring process. The institution has a satisfactory level of involvement with most community organizations and the public sector. The institution has marketed credit services which address identified community credit needs and has extended loans which benefit its delineated community. Records reflect a reasonable geographic distribution of credit extensions, applications, and denials to all segments of its delineated community. The institution has played a supportive role in promoting and participating in economic revitalization and growth and/or has demonstrated a willingness to explore other activities which help to meet community credit needs. The institution is in compliance with the substantive provisions of antidiscrimination laws and regulations, including fair lending and fair housing laws. Such institutions do not present a serious supervisory concern in CRA matters. They may, however, benefit from additional encouragement to ascertain and help meet community credit needs, initiate community contacts, or pursue special programs on an ongoing and more aggressive basis.

Needs to Improve Record of Meeting Community Credit Needs

An institution in this group needs to improve its overall record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community is unreasonable and may exclude some low- and moderate-income neighborhoods. The institution's program for meeting responsibilities under CRA is inadequate; specific, identifiable weaknesses are apparent. The institution does not have a comprehensive CRA training program. The institution does not adequately document or monitor its CRA-related activities. The institution engages in limited affirmative outreach to the community, passively determines credit needs and addresses them primarily with existing standard loan products. The board of directors and senior management are rarely involved in the institution's CRA planning, implementation and monitoring process, if such process exists. The institution has limited, if any, involvement with local community organizations and the public sector. The institution has limited marketing of credit services responsive to community credit needs, and advertisements are not generally reflective of identified community credit needs. The types of credit offered may not accurately reflect the list of available credits in the institution's CRA statement. The geographic distribution of credit extensions, applications, and denials demonstrates a disproportionate lending pattern, adversely impacting low- and moderate-income neighborhoods. The institution has played only a limited role in developing projects to foster economic revitalization and growth, but management may express a willingness to consider participation in other activities which help meet community credit needs if they are presented to the institution. The institution is not in compliance with the substantive provision of antidiscrimination laws and regulations, including fair lending and fair housing laws. Such institutions are of supervisory concern in CRA matters and require strong encouragement to improve the level of performance.

Substantial Noncompliance in Meeting Community Credit Needs

An institution in this group has a substantially deficient record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community is unreasonable and excludes

low- and moderate-income neighborhoods. CRA responsibilities are rarely considered within the institution's planning process or its policies, procedures, or training programs. The institution does not have a viable program for meeting responsibilities under CRA. The institution does not actively monitor its CRA activities. Little or no documentation exists that demonstrates an adequate level of performance. The institution is not generally aware of existing credit needs and may not have appropriate loan products to address them. The board of directors and senior management are not involved in the institution's CRA planning, implementation and monitoring process. The institution has no meaningful interaction with community organizations and the public sector. The institution does not advertise credit services based upon identified community needs. Some types of credit extended may not be reflected in the list of available credits in the institution's CRA statement. Restrictive credit policies contribute to unjustified disparate lending patterns, adversely impacting low- and moderate-income neighborhoods. The institution has not actively promoted community economic revitalization or growth, and has shown very limited interest in pursuing other activities to address community credit needs. The institution is in substantial noncompliance with antidiscrimination laws and regulations, including fair lending and fair housing laws. Such institutions are of significant supervisory concern in CRA matters and require the strongest supervisory encouragement to be responsive to community credit needs.

Performance Categories Summary

To evaluate an institution's CRA performance, the twelve assessment factors and criteria are grouped into the following performance categories:

I. Ascertainment of Community Credit Needs
II. Marketing and Types of Credit Extended
III. Geographic Distribution and Record of Opening and Closing Offices
IV. Discrimination and Other Illegal Credit Practices
V. Community Development

Performance Categories

Below are *guidelines* for determining the level of a financial institution's performance under each assessment factor as prescribed in the implementing regulations (designated below by the letters (A) through (L)). The various performance categories are generally descriptive, and *all* attributes do not apply to *every* institution.

I. Ascertainment of Community Credit Needs

The institution is evaluated in this category on activities undertaken to delineate its community and its employment of effective techniques for gathering information to identify community credit needs. Examiners evaluate the effectiveness of an institution's review and development of products and services related to identified community credit needs. This category includes an evaluation of the reasonableness of the institution's community delineation and its CRA Statement. The evaluation process includes the following assessment factors:

(A) Activities conducted by the institution to ascertain the credit needs of its community, including the extent of efforts to communicate with members of its community regarding the credit services it is prepared to offer to the community.

(C) The extent of participation by the institution's board of directors in formulating policies and reviewing the institution's performance with respect to the purposes and intent of the Community Reinvestment Act.

Outstanding

Delineated Community

The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods.

Assessment Factor A

The institution has an outstanding record of determining the credit needs of its community, including low- and moderate-income neighborhoods. This may take the form of:

- Ongoing, meaningful contacts with a full range of individuals and groups representing civic, religious, neighborhood, minority, small business, and commercial and residential real estate development;
- Ongoing contact with officials from city, county and state governments and active participation in public programs; and,
- Established, productive relationships with financial intermediaries resulting in public/private partnership activities.

The institution regularly collects and analyzes local demographic data in relation to its lending activities.

The board of directors and senior management maintain a proactive attitude and a high degree of responsiveness in addressing community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Senior management performs systematic and regular reviews of lending services.

The institution offers products well-suited to identified needs, which may include government-insured and publicly-sponsored programs.

The board of directors and senior management demonstrate willingness to explore and offer conventional products with special features to make credit more widely available, within the bounds of safe and sound lending practices.

Assessment Factor C

CRA is a demonstrated and important component of the board of director's planning process.

A formal, written CRA program exists with goals, objectives and methodology for self-assessment.

The board of directors and senior management:

- Are an integral part of the CRA process and activities.
- Exercise active policy oversight and conduct regular reviews of CRA activities and performance.
- Are personally involved in activities designed to develop, improve and enhance the local community.
- Consistently support prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide active support to the CRA training of personnel.
- Have expanded their CRA Statement describing the institution's CRA policies and programs, discussing the results of their self-assessment, and summarizing documentation of the institution's performance.
- Effectively ensure that CRA technical regulatory requirements are consistently met.

Satisfactory

Delineated Community

The institution's delineated community reasonably meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods.

Assessment Factor A

The institution has a satisfactory record of determining credit needs of its community, including low- and moderate-income neighborhoods. This may take the form of:

- Occasional contacts with a large range of individuals and groups representing civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- Occasional contact with officials from city, county and state governments and some participation in public programs; and,
- Established contact with financial intermediaries that may be used for public/private partnership opportunities.

The institution periodically reviews published, local demographic data in relation to its lending activities.

The board of directors and senior management satisfactorily respond to local input regarding community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Senior management performs informal reviews of lending services.

The institution offers products reasonably suited to identified needs, which may include government-insured and publicly-sponsored programs.

The institution offers a variety of conventional products, and may explore and offer conventional products with special features to make credit more widely available, within the bounds of safe and sound lending practices.

Assessment Factor C

CRA is considered in the board of director's planning process.

The institution's CRA program, including goals, objectives and methodology for self-assessment, is articulated and generally understood by all levels of the institution, but may be informal.

The board of directors and senior management:

• Are generally involved in the CRA process and activities.
• Exercise policy oversight and conduct occasional reviews of CRA activities and performance.
• Have some involvement in activities designed to develop, improve and enhance the local community.
• Consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
• Provide adequate support to the CRA training of personnel.
• Have expanded their CRA statement to describe the institution's CRA policies, programs and results; however, the material in the expanded Statement might not be fully descriptive.
• Generally ensure that CRA technical regulatory requirements are consistently met.

Needs to Improve

Delineated Community

The institution's delineated community is unreasonable and may exclude some low- and moderate-income neighborhoods.
The institution's guidelines for defining its community need some revision.

Assessment Factor A

The institution needs to improve its contacts within the community to determine the credit needs of its community, including low- and moderate-income neighborhoods. This is represented by:
• Limited contact with individuals and groups representing civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
• Limited contact with officials from city, county and state governments and marginal effort to participate in public programs; and,
• A lack of productive contact with financial intermediaries that may be used for public/private partnership opportunities.
The institution occasionally considers or analyzes published demographic data in relation to its lending activities.
The board of directors and senior management show limited response to outside input regarding community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small business and small farms.
Senior management infrequently reviews its CFR-related activities or its lending services in response to changing credit needs.
Credit products may not be structured or sufficiently varied to address the identified credit needs of certain segments of the community, especially in low- and moderate-income neighborhoods.
The institution is not a significant participant in government-insured and/or publicly-sponsored programs.
Limited efforts have been made to offer a variety of conventional products or explore special features to make sound credit more widely available.

Assessment Factor C

CRA is sometimes considered in the board of director's planning process.
The institution's CRA program is inadequate and may lack goals, objectives and methodology for self-assessment.
The board of directors and senior management:
• Have limited involvement in the CRA process and activities.
• May exercise policy oversight and may conduct infrequent reviews of CRA activities and performance.
• Have limited involvement in activities designed to develop, improve and enhance the local community.
• May be reluctant to consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
• Provide only limited support to the CRA training of personnel.
• Have not expanded their CRA statement to address its program and the results achieved.
• May be lax in ensuring that CRA technical regulatory requirements are met.

Substantial Noncompliance

Delineated Community

The institution's delineated community is unreasonable and excludes low- and moderate-income neighborhoods.
The institution's guidelines for defining its community require substantial revision.

Assessment Factor A

The institution does not conduct, or has little involvement in, activities that determine credit needs of its community, including low- and moderate-income neighborhoods. This is represented by few, if any, contacts with:
• Representatives of civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
• Officials from city, county and state governments and no effort to participate in public programs; and,
• Financial intermediaries that may be used for public/private partnership opportunities.
The institution is unaware of, or ignores, the existence of demographic data and does not use it to analyze its lending activities.
The board of directors and senior management rarely (or, do not) respond to community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.
Lending services are rarely (or, are not) reviewed to respond response to changing credit needs.
Customer input and/or information on credit needs is rarely (or, is not) taken into account in product development, especially from customers in low- and moderate-income areas.
There is nominal or no participation in government-insured and/or publicly-sponsored programs.
There is little or no effort made to offer a variety of conventional products or explore special features to make sound credit more widely available.

Assessment Factor C

CRA is rarely (or, is not) considered in the board of director's planning process.
The institution does not have an articulated and implemented program for dealing with its responsibilities under CRA.
The board of directors and senior management:
• Have little, if any, involvement in the CRA process and activities.
• Exercise little, if any, policy oversight with respect to CRA and rarely (or, do not) conduct reviews of CRA activities and performance.
• Have few, if any, involvement in activities designed to develope, improve and enhance the local community.
• Are reluctant to consider prudent but innovative underwriting criteria that help address community credit needs and that may not all within the criteria of the institution's more conventional loan products.
• Provide little, if any, support to CRA training of personnel.
• Have not expanded, and will not consider expansion of, their CRA statement.
• Rarely (or, do not) ensure that CRA technical regulatory requirements are met.

II. Marketing and Types of Credit Extended

The institution is evaluated in this category on its marketing efforts to promote the types of credit it is prepared to offer to its community, product implementation, and overall delivery of credit services relative to the institution's CRA statement. Emphasis is placed on special credit related programs. The evaluation process will consider the following assessment factors:
(B) The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services it offers.
(I) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business and small farm loans within its community; the purchase of such loans originated in its community; or other indirect activities aimed at helping meet local community housing, small business and small farming needs.
(J) The institution's participation in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses or small farms.

Outstanding

Assessment Factor B

The institution has implemented sound marketing and advertising programs that are approved, reviewed and monitored by senior management and the board of directors. The programs inform all segments of the community of general financial products and services offered, including those that have been developed to address identified community credit needs.
Marketing strategies ensure that products and services are responsive to identified community needs. Advertisements are designed to stimulate awareness of credit services throughout the entire community, including low- and moderate-income neighborhoods. This includes use of special

media aimed at particular segments of the community.

Complete, readily available marketing and advertising records are maintained and internally reviewed for compliance with applicable laws and regulations.

Personnel routinely provide assistance to individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution affirmatively addresses all of the identified community credit needs through the origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect exceptional responsiveness to the most pressing community credit needs. A substantial majority of loans are within the delineated community. Loan volume, in relation to the institution's resources and the community's credit needs, exceeds normal expectations.

The CRA Statement correctly lists all of the credit products available throughout the institution's community.

Assessment Factor J

When an identified community credit need exists, the institution takes a leadership role in meeting that need and affirmatively participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

Satisfactory

Assessment Factor B

The institution has implemented adequate marketing and advertising programs that function outside the formal oversight of senior management and the board of directors. The programs are designed to inform all segments of the community of general financial products and services offered and any products that may have been developed to address identified community credit needs.

Although advertisements, including those for credit products, are carried in widely circulated local media, additional advertising in media directed toward low- and moderate-income neighborhoods may be needed in order for the advertising program to be effective throughout the community.

The institution maintains adequate records of its advertising, and these are occasionally reviewed for effectiveness in all segments of the community. The institution may not have established policies and procedures to review proposed marketing campaigns for compliance with applicable laws and regulations. Personnel occasionally provide assistance to individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution addresses the majority of identified community credit needs through the origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect a general responsiveness to the most pressing community credit needs. A significant volume of loans are within the delineated community. Loan volume is adequate in relation to the institution's resources and the community's credit needs.

The CRA Statement correctly lists the majority of the credit products available throughout the institution's community.

Assessment Factor J

When an identified community credit need exists, the institution generally takes some steps to help meet that need and frequently participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

Needs to Improve

Assessment Factor B

The institution's marketing and advertising programs have limited oversight by senior management and the board of directors, and may require revision or expansion to inform all segments of the community of general financial products and services offered.

Marketing strategies are primarily designed to promote an image of the institution as a provider of general financial products and services or of only deposit services.

Although advertisements are carried in primary local media, the institution does not advertise in media specifically directed to low- and moderate-income neighborhoods.

The institution maintains limited documentation of advertising, and it is infrequently reviewed for compliance with applicable laws and regulations. Marketing campaigns are infrequently reviewed for their effectiveness in informing all segments of the community.

Personnel make limited effort to assist individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution is marginally involved in addressing identified community credit needs through origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect marginal responsiveness to the most pressing community credit needs. A significant volume of loans may be outside the delineated community, and/or loan volume may be low in relation to the institution's resources and the community's credit needs.

The CRA Statement may not accurately list certain credit products available and/or may list some credit products which are not available.

Assessment Factor J

When an identified community credit need exists, the institution sometimes becomes involved in helping to meet that need and infrequently participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

Substantial Noncompliance

Assessment Factor B

The institution's marketing and advertising programs are inadequate as they do not address credit products directed to all segments of the community, including low- and moderate-income neighborhoods, or the institution does not have such programs.

The institution does not maintain sufficient documentation of advertising, and it is rarely (or, is not) reviewed for compliance with applicable laws and regulations.

There is little, if any, effort to assist individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution is minimally involved in addressing identified community credit needs through origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect little, if any, responsiveness to the most pressing community credit needs. A substantial majority of loans are outside the delineated community, and/or loan volume is excessively low in relation to the institution's resources and the community's credit needs.

The CRA Statement is materially inaccurate with respect to the types of credit the institution is willing to make available throughout its community.

Assessment Factor J

When an identified community credit need exists, the institution rarely (or, does not) become involved in helping to meet that need or in participating in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

III. Geographic Distribution and Record of Opening and Closing Offices

The geographic distribution of the institution's loans and the effects of opening or closing any offices are considered in this category. The evaluation process under this category will consider the following assessment factors:

(E) The geographic distribution of the institution's credit extensions, credit applications, and credit denials.

(G) The institution's record of opening and closing offices and providing services at offices.

Outstanding

Assessment Factor E

The institution has a documented analysis demonstrating that the geographic distribution of its credit extensions, applications, and denials reflect equal access to, and penetration of, all segments of its delineated community, including low- and moderate-income neighborhoods.

The institution has formulated procedures to identify the geographic distribution of its loan products. This information is documented and used by the board of directors and senior management in the institution's establishment of loan policies, products and services, and marketing plans.

Assessment Factor G

Offices are readily accessible to all segments of the community. Business hours and services are tailored toward the

convenience and needs of the community and are reviewed for their effectiveness on an ongoing basis.

Prior to closing offices, the institution assesses the potential impact on its ability to continue offering an appropriate level of services throughout its community. This assessment includes the institution's taking into consideration information and ideas obtained from consultations with members of the community to minimize the adverse impact of an office closing.

The institution's record of closing offices has not had an adverse impact on its community.

Satisfactory

Assessment Factor E

The institution's analysis of its geographic distribution of credit extensions, applications, and denials demonstrates reasonable access to, and penetration of, all segments of the community, including low- and moderate-income neighborhoods.

The geographic distribution of the institution's loan products may be used by the board of directors and senior management in the establishment of loan policies, products and services, and marketing plans.

Assessment Factor G

Offices are reasonably accessible to all segments of the community.

Periodic review of services and business hours assures accommodation of all segments of the community.

The institution makes an adequate assessment of the potential adverse impact of an office closing on its community. This assessment includes contacts with members of the community for their views on the impact and ways to minimize it.

The institution's record of opening and closing offices has not adversely affected the level of services available in low- and moderate-income neighborhoods.

Needs to Improve

Assessment Factor E

The geographic distribution of the institution's credit extensions, applications, and denials demonstrates a disproportionate pattern with respect to the activity inside its delineated community as compared to the activity outside the delineated community and/or with respect to the distribution of loans, applications and denials within the various segments of its community.

The board of directors and senior management may be unaware of the geographic distribution of their loan products or accord inadequate or no review of lending policies and practices with regard to how they affect lending patterns within the community.

Senior management has not taken adequate corrective action on previously identified unreasonable lending patterns.

Assessment Factor G

Accessibility to the institution's offices is difficult for certain segments of the community.

Business hours may be inconvenient relative to the needs of the community, particularly low- and moderate-income neighborhoods, and they are infrequently reviewed for effectiveness.

The institution's assessment of the potential adverse impact an office closing will have on its community and of methods needed to minimize that impact is inadequate and needs revision or expansion.

The institution's record of opening and closing offices indicates disparate impact upon certain segments of its community, particularly low- and moderate-income neighborhoods, although the result may be unintentional.

Substantial Noncompliance

Assessment Factor E

The institution does not perform an analysis of its distribution of credit extensions, applications, and denials. The geographic distribution does, in fact, indicate unreasonable lending patterns inside and outside its delineated community, particularly in low- and moderate-income neighborhoods.

The board of directors and senior management disregard the geographic distribution of the institution's loan products and have taken limited or no corrective action on previously identified unreasonable lending patterns.

Loan policies and procedures contain restrictions which have or can be expected to have a significant adverse impact on loan availability in low- and moderate-income neighborhoods.

Assessment Factor G

There is limited accessibility to the institution's offices for certain segments of the community, particularly low- and moderate-income neighborhoods.

Business hours are inconsistent with the needs of the community and they are rarely, if ever, reviewed for effectiveness.

The institution rarely, if ever, makes an assessment of the potential impact of its office opening and closing practices on the community.

The institution's record of opening and closing offices suggests a continuing pattern of disparate impact upon certain segments of its community, particularly low- and moderate-income neighborhoods.

IV. Discrimination and Other Illegal Credit Practices

The institution is evaluated in this category on its compliance with antidiscrimination and other related credit laws, including efforts to avoid doing business in particular areas or illegal prescreening. The evaluation process will consider the following assessment factors:

(D) Any practices intended to discourage applications for types of credit set forth in the institution's CRA Statement(s).

(F) Evidence of prohibited discriminatory or other illegal credit practices.

Outstanding

Assessment Factor D

The institution affirmatively solicits credit applications from all segments of its community, with a strong focus on low- and moderate-income neighborhoods.

The board of directors and senior management have developed complete written policies, procedures, and training programs to assure the institution does not illegally discourage or prescreen applicants.

The institution regularly assesses the adequacy of implemented, nondiscriminatory policies, procedures and training programs through internal reviews and management reporting mechanisms.

Assessment Factor F

The institution is in compliance with the antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Satisfactory

Assessment Factor D

The institution generally solicits credit applications from all segments of its community, including low- and moderate-income neighborhoods.

The board of directors and senior management have developed adequate policies, procedures and training programs supporting nondiscrimination in lending and credit activities. Minor revisions or expansions may be required.

The institution periodically assesses the adequacy of implemented, nondiscriminatory policies, procedures and training programs through internal reviews and management reporting mechanisms.

Assessment Factor F

The institution is in compliance with the substantive provisions of antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Any violations disclosed are nonsubstantive in nature, and corrections are made promptly by senior management.

Needs to Improve

Assessment Factor D

Although the institution accepts credit applications from all segments of its community, available data suggests the possibility of isolated, illegal discouraging or prescreening of applicants.

The institution's policies, procedures and training programs are inadequate and require significant revision or expansion to support nondiscrimination in lending and credit activities.

The review and/or reporting mechanisms developed by the board of directors and senior management need improvement to fully assure that the institution does not illegally discourage or prescreen applicants.

Assessment Factor F

The institution is not in compliance with the substantive provisions of antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage

Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Substantive violations are noted on an isolated basis. Violations may be repeated from previous examinations.

Substantial Noncompliance

Assessment Factor D

Available data indicates that the institution rarely, if ever, considers credit applications from all segments of its community. The volume of applications from low- and moderate-income neighborhoods is very low or nonexistent.

The institution's policies, procedures and programs are either nonexistent or in need of substantial revision to properly support nondiscrimination in lending and credit activities.

The review and/or reporting mechanisms developed by the board of directors and senior management and designed to assess implemented policies, procedures and training programs to support nondiscrimination in lending and credit activities are inadequate and require substantial revision. Or, the institution has not developed any review or reporting mechanisms to assure that the institution does not illegally discourage or prescreen applicants.

Assessment Factor F

The institution is in substantial noncompliance with antidiscrimination laws and regulations, including: The Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

The institution has demonstrated a pattern or practice of prohibited discrimination, or has committed a large number of substantive violations of the antidiscrimination laws and regulations. Violations may be repeated from previous examinations.

V. Community Development

An institution is evaluated in this category on its participation in community development and/or other factors relating to meeting local credit needs. The evaluation process will consider the following assessment factors:

(H) The institution's participation, including investments, in local community development and redevelopment projects or programs.

(K) The institution's ability to meet various community credit needs based upon its financial condition and size, and legal impediments, local economic conditions and other factors.

(L) Any other factors that reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

Outstanding

Assessment Factor H

The institution has maintained, through ongoing efforts, a high level of participation in development and redevelopment programs within its community, often in a leadership role.

Assessment Factor K

The institution has played a leadership role in developing and/or implementing specific projects promoting economic revitalization and growth, consistent with its size, financial capacity, location, and current local economic conditions. Its participation in these projects may have taken, for example, the form of investment, direct loans or loans through intermediaries, financial services, and technical assistance.

The institution has established good working relationships with government and private sector representatives to identify opportunities for the institution's involvement in addressing community development needs.

Assessment Factor L

The institution has engaged in other meaningful activities, not covered under other performance categories, which contribute to the institution's efforts to help meet community credit needs.

Satisfactory

Assessment Factor H

The institution is generally aware of any community development and redevelopment programs within its community, and periodically participates in such programs.

Assessment Factor K

The institution generally supports the development or implementation of specific projects promoting economic revitalization and growth, consistent with its size, financial capacity, location, and current local conditions. Its participation in these projects may have taken, for example, the form of investment, direct loans or loans through intermediaries, financial services, and technical assistance.

The institution has informed government and private sector representatives of its interest in participating in community development projects, and is already involved in some aspects of planning or implementation.

Assessment Factor L

The institution has demonstrated a willingness to explore other activities contributing to its efforts to help meet community credit needs which are not covered in other performance categories.

Needs to Improve

Assessment Factor H

The institution has limited awareness of any community development and redevelopment programs within its community and rarely seeks them out or participates in them.

Assessment Factor K

The institution has played only a limited role in developing projects to foster economic revitalization and growth, and has taken limited action to learn or support the specific features of existing programs.

The institution has rarely contacted government and private sector representatives to discuss community development needs and opportunities.

Assessment Factor L

The institution expresses a willingness to consider participation in other activities designed to meet community credit needs only when specific proposals or requests are brought to its attention.

Substantial Noncompliance

Assessment Factor H

The institution is unaware of, or not interested in, the existence and nature of community development programs within its community. The institution has made little or no effort to participate in these programs.

Assessment Factor K

The institution has played a very small, if any, role in developing or implementing specific projects promoting economic revitalization and growth.

The institution has made little, if any, effort to contact government or private sector representatives to learn about community development needs or the features of existing programs.

Assessment Factor L

Senior management has shown little, if any, interest in pursuing other activities, not covered under other performance categories, which would enhance the institution's effectiveness in helping address community credit needs.

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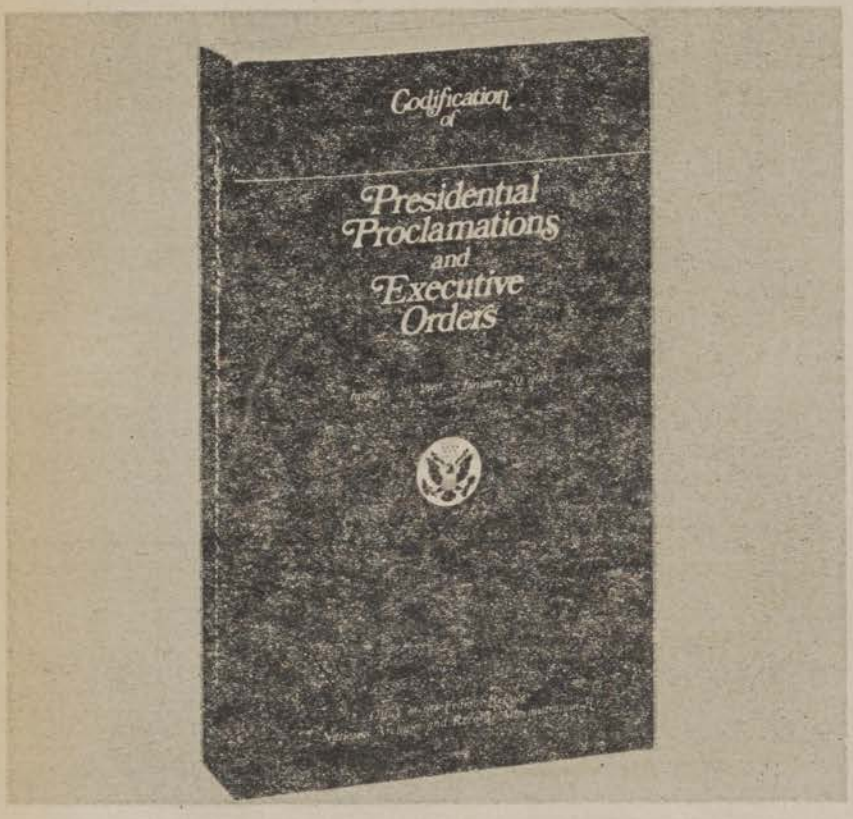
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